Information and Privacy
Commissioner/Ontario

ANNUAL REPORT

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Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

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June 27, 1989

The Honourable Hugh Edighoffer, M.P.P.
Speaker of the Legislative Assembly

Dear Sir:

Pursuant to Section 58 of the *Freedom of Information and Protection of Privacy Act, 1987*, I have the honour to present my first Annual Report for the year ending December 31, 1988.

Yours truly,

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NOTE TO READERS:

Certain words used in the text of this Report have a special meaning within the context of the *Freedom of Information and Protection of Privacy Act, 1987*. These words have been defined in order to assist readers:

Compliance:

Adherence by institutions to the requirements of the *Act*, including provisions relating to both access to information and protection of personal privacy.

General Record:

Any record of information, other than a record containing personal information, which is held by an institution.

Head:

The minister or other designated person responsible for making decisions under the *Act* on behalf of an institution.

Information:

Any record held by an institution, including both general records and personal information.

Institution:

A government of Ontario ministry or agency that is included within the scope of the *Act*.

Personal Information:

Any information about an identifiable individual held by an institution.

Scheduled Institution:

An agency that falls within the scope of the *Act* by virtue of inclusion on a schedule attached to the *Act*.

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COMMISSIONER'S MESSAGE

The *Freedom of Information and Protection of Privacy Act, 1987* came into force on January 1, 1988. A great deal of preparation took place before that date to enable the Office of the Information and Privacy Commissioner to open its doors to the public on time. Bill 34 received third reading on June 25, 1987 and was given Royal Assent on the last day of the 33rd Legislature - June 29. The *Act* requires that the Commissioner be appointed, as an Officer of the Legislature, by the Lieutenant-Governor-in-Council on address of the Assembly. This could not occur until after the Legislature reconvened following the September 10 provincial election. I was asked to serve as Information and Privacy Commissioner in July of 1987 and began to work on a contractual basis in August. I was officially appointed by Order-In-Council on November 25, 1987 during the 1st Session of the 34th Legislature.

The period between my appointment as Commissioner and the official commencement of the *Act* was taken up with organizational matters, research and education. I consulted with my federal and provincial counterparts - the Information Commissioner of Canada, Inger Hansen, the Privacy Commissioner of Canada, John Grace, and Marcel Pépin, who was then the President of the Quebec Commission on Access. I contacted acknowledged experts in the fields of access to information and protection of privacy issues in Canada and the United States, in an effort to benefit from their experience. I also sought the advice of administrative law experts, both academics and practitioners, on how to devise an appeal procedure that would comply with the procedural requirements of the *Act*.

A considerable amount of time in the early days was spent on administrative matters - locating office space, buying furniture, hiring staff, creating a corporate identity, designing internal systems, and working on budget proposals.

At the beginning of 1988 our staff numbered 10 employees, and we were all preparing for our first appeals.

During the course of our first year, we refined our appeal procedures, conducted inquiries, and issued a total of 36 Orders covering 79 appeals. We also successfully mediated 105 appeals. We continued to work on administrative systems for our own office, grew to a staff of 29, expanded our office space, created forms, wrote and distributed a brochure, published our "Newsletter" and "Summaries of Appeals", and developed a computer tracking system to help ministries and agencies comply with the reporting requirements of the *Act*.

Along with other members of our staff, I conducted training sessions, participated in conferences, and travelled to other jurisdictions to learn more about freedom of information and protection of privacy issues.

Throughout this eventful first year, we have been assisted and encouraged by the co-operation received from staff at Management Board of Cabinet's Freedom of Information and Privacy Branch. We are also gratified by the positive working relationship that has developed between our agency and the many Freedom of Information and Privacy Co-ordinators from various ministries and agencies who themselves were struggling to fulfil their own responsibilities and duties under this new legislation. In my view, everyone connected with the *Act* did an excellent job in this first year and should be commended for accomplishing so much in such a short period of time.

I particularly want to thank the members of my own staff for their patience, hard work and dedication in helping to steer this agency through our "start-up" year. The tasks facing us were sometimes difficult, but always challenging and interesting.

Now that many of these start-up issues are behind us, we have taken a deep breath and begun to concentrate on the far-reaching policy implications of this *Act*. Administering the *Freedom of Information and Protection of Privacy Act, 1987* continues to be a demanding task, but we are all very optimistic and ready for the challenges that lie ahead.

MANDATE

From a set of principles enunciated by the Commission on Freedom of Information and Individual Privacy (the "Williams Commission") in the early 1980s, the concepts of access to government-held information and protection of personal privacy have now been codified in Ontario's *Freedom of Information and Protection of Privacy Act, 1987*. Chief among these principles is the integration of both of the concepts in one statute.

One of the challenges facing the Information and Privacy Commissioner is to uphold these separate values and to strike the proper balance, when necessary, between the public's right to know and an individual's right to confidentiality of personal information.

The *Act* requires government institutions to make initial determinations regarding the proper application of the law. However, the *Act* also recognizes that these decisions are sometimes difficult and complex, and that, in the words of the *Act*: "decisions on the disclosure of government information should be reviewed independently of government." The *Act* gives this responsibility to the Commissioner, and to ensure his independence, the Commissioner is made an Officer of the Legislature, reporting directly to the Assembly.

One of the Commissioner's key functions is to receive and consider appeals from members of the public who have either been refused access to government of Ontario general records, or have been denied access to their own personal information. Any decision made by a head under the *Act* may be appealed to the Commissioner.

The *Act* also recognizes that the adequate protection of personal privacy is contingent on government institutions conforming to certain standards regarding the collection, storage, dissemination and ultimate disposal of personal information. The Commissioner is responsible for ensuring that the standards established by the *Act* and its regulations are adhered to. If he finds, as a result of an investigation, that a government institution's personal information practices contravene the *Act*, the Commissioner is empowered to order the institution to cease a collection practice, or to destroy records containing personal information.

The *Act* also gives the Commissioner an advisory role. Whenever proposed legislation or new government programs include provisions with privacy protection implications, the Commissioner can offer his comments.

The experience of other jurisdictions indicates that the effectiveness of the new rights granted under freedom of information and privacy legislation is directly related to the public's knowledge of those rights. To ensure public awareness, Ontario's Commissioner is authorized to conduct public education programs and provide information on the Commissioner's role and activities.

The Commissioner can also conduct research on any matter relating to the purposes of the *Act*. Because we live in what can accurately be characterized as "the information society", innovative technologies continue to expand the role of information as a commercial, scientific and social decision-making tool. Although there are widely accepted benefits to this kind of technological advancement, the *Act* recognizes the need to carefully monitor and assess the impact these changes will have on personal privacy and access to information.

Finally, the *Act* recognizes the value of active public participation in the implementation of rights established by the new law by allowing members of the public to make complaints and express opinions regarding the operation of this new legislation.

ORGANIZATION

The Office of the Information and Privacy Commissioner is comprised of the Commissioner's office and three Branches - Administration and Communications; Legal Services; and Compliance and Investigations.

A. Commissioner's Office

The Commissioner's overall mandate encompasses several functions. Most of the day to day administrative and operational responsibilities have been delegated to his professional staff. However, as the agency's chief executive officer, the Commissioner provides overall administrative and policy direction. The agency's three branch Directors report to the Commissioner.

To date the Commissioner has not delegated his responsibility with respect to the conduct of inquiries and issuance of binding orders. During the course of an appeal, if a settlement between an appellant and the government institution is not fully successful, the Commissioner must conduct an inquiry and issue a binding order that disposes of the matter. All inquiries and orders are processed through his office.

The Commissioner's office also maintains ongoing relations with the Freedom of Information and Privacy Branch of Management Board of Cabinet, the various offices and departments of the Office of the Assembly, the Board of Internal Economy, and the Standing Committee on the Legislative Assembly, regarding all matters affecting the operation of the *Act*.

The Commissioner's office co-ordinates policy research and development for the agency, and maintains a small research library. The Commissioner is assisted by an executive assistant, a senior policy advisor and an administrative assistant who also acts as the registrar of appeals.

During the first year of operation, the Commissioner and his senior staff have been closely involved in the start-up of the agency, determining staff requirements and the most appropriate organizational structure, developing practices and procedures for an effective appeal process, conducting inquiries, and issuing orders.

In addition, a number of long-term issues have been under consideration by the Commissioner, including an analysis of the confidentiality provisions that are to be reviewed by the Standing Committee on the Legislative Assembly, and the implications of the extension of the *Act*'s jurisdiction in 1991 to cover some 3,000 local government bodies. The Commissioner's Office must assess the organizational and operational impact of this expanded jurisdiction, and determine the best way of applying the principles of the *Act* to the municipal context.

Finally, as part of his educational role, the Commissioner has spoken to a wide variety of groups and organizations about the impact of Ontario's *Freedom of Information and Protection of Privacy Act, 1987*.

B. Administration and Communications

This branch is responsible for providing general operational support, and implementing administrative and human resource policies and practices for the agency. The branch Director and his staff prepare, administer and monitor the agency budget; conduct financial analyses; and provide support services, including purchasing, equipment maintenance, printing, and office leasing. The branch also performs human resource functions, including recruitment, and staff training and development.

The Administration branch acts as the principle contact for the various offices and departments of the Office of the Assembly, as well as the Board of Internal Economy. Office security and French language services are also co-ordinated by this branch.

During the first year, the Director performed a number of start-up administrative functions, including providing the agency with the necessary equipment, furniture and office space; recruiting full time staff and project consultants; developing office policies and procedures; and generally assisting the Commissioner in planning for the development of the agency.

In addition, the agency installed a sophisticated security system in its offices to ensure the adequate protection of records transferred from various government institutions as part of the appeal process.

The communications function also comes within the purview of the Administration branch. Headed by a Manager, this unit is responsible for the agency's com-

munity outreach and public education programs. It also handles media relations and provides information services to the general public regarding the operation of the *Act*. Public speaking engagements by the Commissioner and the staff are arranged through this unit.

C. Legal Services

The Legal Services branch provides all required legal support to the agency, and is responsible for processing appeals made to the Commissioner under the *Act*. The branch consists of two units and is headed by a Director.

The appeals unit is comprised of a Manager and eight Appeals Officers. The unit is responsible for processing appeals filed under the *Act*, which involve denial of access to general records, third party information, access to personal information, and correction of personal information on file with the government. Staff deal directly with appellants and various government institutions in an attempt to mediate settlements of issues arising in the appeals, and also assist with cases which proceed to the inquiry stage.

The other unit, legal support services, provides opinions and other general legal services for the agency. Duties include the analysis of comparative legislation in other jurisdictions; reviewing relevant court decisions; preparing commentaries on emerging information and privacy issues; and providing legal opinions to Appeals Officers on issues that arise in the context of appeals.

As with any new legislation, a large number of legal issues arise that require in-depth legal research. A staff of two lawyers assist the Director in preparing legal memoranda dealing with various aspects of the *Act*, the precedents and court cases of other jurisdictions.

D. Compliance and Investigations

The Compliance and Investigations branch is primarily involved in ensuring that provincial institutions comply with the various provisions of the *Act*. Investigations conducted by this branch deal with both access to information and privacy protection. The branch consists of three units, and is headed by a Director.

The *Act* requires that Ontario government institutions adhere to certain standards and practices intended to protect the integrity of personal information in the custody and control of these institutions. The compliance investigations unit is responsible for ensuring that institutions properly discharge this responsibility. This unit is comprised of a Manager and four Compliance Auditors, who conduct investigations of compliance issues which arise either in the context of an appeal or as a result of a complaint from a member of the public. The unit also monitors government policies dealing with the collection and disposal of personal records, and provides advice and consultation on the privacy implications of existing or planned computer systems in various government institutions.

During the first year of operation, the compliance investigations unit concentrated on developing and implementing audit practices and procedures applicable to the context of privacy protection, and began to conduct a number of reviews and investigations into specific practices in place in several institutions.

This branch also contains a computer systems unit which is responsible for the development, implementation and ongoing administration of the agency's computer-related requirements. During the first year of operation, this unit designed and introduced a computerized tracking system for external users, several databases for internal use, automated reports, and other related projects, all of which operate on a local area network. The agency's word and data processing requirements are also handled by this unit.

The third part of this branch is the research and statistics unit which provides research support and program evaluation for various aspects of the Commissioner's mandate. The main focus of the unit over the past year has been the monitoring of data collection techniques used by all scheduled institutions, to ensure consistency of methodology in the various reporting requirements outlined in the *Act*. The unit has also been involved in other research-related activities, including the design of forms, surveys and questionnaires; a detailed study and analysis of trends, methodologies and information practices of government institutions; development of effective procedures for the compilation and tracking of information throughout the government; reviews of relevant literature; and the collection and compilation of statistical data from all scheduled institutions for their inclusion in the Commissioner's Annual Report.

PRACTICES AND PROCEDURES

A. Appeal Process

Whenever a new agency is created by statute and required to act as an administrative tribunal, one of the more difficult tasks facing its decision-makers is the design of the agency's practices and procedures. The enabling legislation may set out specific procedural rights, and in many instances the operation of the agency is made subject to Part I of the *Statutory Powers Procedure Act* (the "*S.P.P.A.*"). Among other things, the *S.P.P.A.* provides for reasonable notice of hearings; the right to representation by counsel or agents for all parties to a proceeding; the right of the parties and their representatives to call and examine witnesses, present arguments and submissions, and conduct cross-examinations of witnesses; and the requirement that all final decisions and orders be in writing, with the corresponding right of any party to request written reasons for the decision.

The *Freedom of Information and Protection of Privacy Act, 1987* (the "*Act*") provides that the *S.P.P.A.* does not apply to an inquiry conducted by the Commissioner. This does not mean, however, that the Commissioner has absolute discretion to determine the inquiry process. Section 52 of the *Freedom of Information and Protection of Privacy Act, 1987*, in addition to setting out the powers of the Commissioner during an inquiry, also contains several provisions relating to the procedural rights of persons participating in an inquiry. For example, anyone involved in an inquiry may be represented by counsel or an agent. Also, the appellant, the head, and any affected party must be provided with an opportunity to make representations to the Commissioner, although the form of those representations is left to the discretion of the Commissioner. Section 52 also provides that no person is entitled to be present during, or to have access to or to comment on representations made to the Commissioner by any other person. Moreover, the section permits an inquiry to be conducted in private, at the Commissioner's discretion.

The *Act* gives the Commissioner considerable latitude in devising procedures, and the design of these procedures is necessarily shaped by the special nature of the issues and decisions the Commissioner is required to make. For example, some appeals involve disputes relating to records containing personal information or records under consideration by the Executive Council. Both of these types of records are exempt from disclosure under the *Act*. If the contents of any such records were disclosed to the public during an inquiry, this would render the exemption and the appeal meaningless, so it is necessary to design procedures which address these unique issues while at the same time upholding the basic principles of fairness. Apart from the procedural rights mentioned above, and the requirement that following unsuccessful mediation the appeal proceed to an inquiry, the *Act* is largely silent as to how the appeal process should work and what procedures the Commissioner should employ. While the procedures followed during the appeal process will continue to evolve as the Commissioner's Office gains more experience, they will always be guided by the overall principle of fairness.

What follows is an outline of the appeal process, from the mediation stage through to an inquiry and a binding order.

Subsection 50(1) of the *Act* gives a person who has made a request for:

(a) access to general records;
(b) access to personal information; or
(c) correction of personal information;

the right to appeal any decision of a head under the *Act* to the Commissioner. A third party who has been given notice of a request for access to general records also has a right of appeal.

Once the head has made a decision, the requester has 30 days to file a written notice of appeal with the Commissioner.

After an appeal is filed, the head of the institution and any affected parties are notified of the appeal. It is the Commissioner's practice to attempt to mediate all appeals, although in exceptional circumstances an appeal may proceed directly to an inquiry.

Mediation begins when an Appeals Officer is assigned to the case. The Appeals Officer first ascertains the issues arising from the appeal and determines the respective positions of the parties. If necessary, the Appeals Officer will contact both the appellant and the government representative to ensure there are no misunderstandings. Where access to a particular record is in dispute, the Appeals Officer will review the record and attempt to

mediate a settlement between the parties. If mediation is not possible or only partially successful, the appeal proceeds to an inquiry. At this stage the Appeals Officer prepares a report which sets out the facts and issues arising from the appeal.

Once the inquiry stage is reached, a formal Notice of Inquiry is sent to all parties, together with a copy of the Appeals Officer's Report. The parties are advised of their right to make representations to the Commissioner with respect to the issues arising from the appeal, and although the Appeals Officer's Report attempts to identify all relevant issues, it is made clear to the parties that they are free to address any other issues in their representations.

The Commissioner's normal practice is to require written submissions, and the parties are provided with a reasonable period of time to prepare their representations. In some cases it is more appropriate for representations to be made orally, and in others the Commissioner may decide that the circumstances warrant a more public airing of the issues. These decisions are made on a case-by-case basis, depending on the particular circumstances of the appeal.

The representations of the parties are reviewed and analysed, and when the Commissioner has all the necessary information, he prepares a written order disposing of all issues in the appeal. A copy of the Commissioner's Order is sent to each party. The order is also summarized and published in the agency's "Newsletter" and "Summaries of Appeals".

B. Compliance and Investigations

The *Act* requires the Commissioner to undertake an annual review of the effectiveness of the *Act*, and to assess the extent to which Ontario government institutions are complying with the *Act*'s provisions. After completing his review, the Commissioner is authorized to make recommendations regarding the practices of individual ministries and agencies.

To discharge these responsibilities, the Commissioner must investigate, monitor, assess, evaluate, audit and generally oversee how the various institutions have implemented the *Act* and its regulations.

The Commissioner's compliance function operates at two levels.

First, the Commissioner has a general responsibility for ensuring that government institutions are complying with the *Act* as a whole. The scope of this responsibility encompasses matters such as compliance with statistical reporting requirements; proper processing of requests for information; a wide range of records management issues; or whether an institution provides a public reading room.

On a more specific level, the Commissioner must satisfy himself that institutions have complied with those sections of the *Act* that seek to "protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information." The *Act* establishes certain requirements dealing with the collection, retention, use, disclosure, disposal and security of personal information. In addition, Management Board of Cabinet is responsible for ensuring that regulations are in place which establish uniform administrative standards in each of the above-mentioned areas.

The Compliance and Investigations branch of the Commissioner's Office will become involved either when a public complaint has been received by the Office, when an appeal is received that raises compliance or privacy issues, or when the Commissioner determines that a particular issue warrants investigation.

In instances where complaints are filed by members of the public, a compliance investigator will contact both the complainant and representatives of the institution to determine the validity of the complaint. When this investigation is completed, a report is prepared which assesses the matter for consideration by the Commissioner.

Appeals often involve a number of issues besides the denial of a request for access. These issues could include compliance concerns such as the manner in which personal information can be retrieved, or the extent to

which institutions are complying with the *Act*. A compliance issue could be limited to one specific aspect of the operation of the institution, or could have ministry-wide implications. In either case, compliance investigators are directed to conduct a thorough audit of the institution's practices and procedures, and to report their findings to the Commissioner.

The Compliance and Investigations Branch is also involved in systematic reviews of institution operations, where a particular ministry or agency recognizes the need to evaluate and perhaps change its administrative and records management practices in order to comply with the provisions of the *Act*. Because the *Act* imposes new standards and practices for all government institutions, it is expected that most ministries and agencies will review their procedures and practices; the Compliance and Investigations branch is available to assist in this process.

The systematic reviews conducted by the Commissioner's staff focus on such matters as record keeping practices, security systems, and the various storage, retrieval and disposal practices used by institutions in dealing with the personal information in their custody and control.

In some cases, an investigation or audit could result in recommendations by the Commissioner that a particular institution change its practices and procedures in order to comply with the *Act*. In more serious cases, the Commissioner may order an institution to cease a collection practice, or to destroy collections of personal information that contravene the *Act*. If the Commissioner is considering imposing an order, subsection 59(b) of the *Act* requires him to first provide the head of the institution with an opportunity to present arguments to the Commissioner.

SECTION 58(2): EFFECTIVENESS REVIEW

Subsection 58(2) of the *Act* requires the Commissioner to undertake a comprehensive review of the effectiveness of the *Act* in providing access to information and protection of personal privacy. This subsection further stipulates that at least three matters must be included in the Commissioner's review, namely:

- a summary of the nature and ultimate resolution of appeals;
- an assessment of the extent to which institutions are complying with the *Act*; and
- the Commissioner's recommendations regarding practices of particular institutions and proposed revisions to the *Act* and regulations.

These matters will be dealt with separately in this section of the Annual Report.

The wording of subsection 58(2) suggests that the Commissioner's review need not necessarily be restricted to the three matters listed above. Rather, all relevant and pertinent matters should be included, in order that the Commissioner's Annual Report comprise a comprehensive review of the *Act*.

To appreciate the effectiveness of any new legislation, it is often useful to look at the new provisions in the context of what preceded it.

Before the *Freedom of Information and the Protection of Privacy Act, 1987* came into force on January 1, 1988, access to government information in Ontario was largely discretionary. It was up to individual ministers to decide whether the public interest warranted the release of specific records or information, and, as the Williams Commission discovered, this resulted in inconsistent and ad hoc practices. The public had no legal right to ask for, let alone receive, government information, and the civil service oath of secrecy acted as a further disincentive to disclosure of records in the custody and control of the provincial government bureaucracy.

This tradition of official secrecy was quite understandable, since it was inherited from Great Britain as part of our constitutional heritage. However, it is fair to say that, prior to the passage of the *Act* in 1987, principles of secrecy were deeply entrenched at all levels of the Ontario government.

In passing the *Freedom of Information and Protection of Privacy Act, 1987* the Ontario Legislature broke with this inherited tradition, and, for the first time, gave the public a legal right of access to government records and to their own personal information. This right to physical access alone, however, will not achieve all of the *Act*'s goals and objectives. In the long run, the success of the *Act* will be measured in part on the basis of how well it has succeeded in changing the attitudes of government officials as custodians of information. The effectiveness of the *Act*, therefore, must be measured in qualitative as well as quantitative terms.

In the following pages, statistical data along with other interpretive material will be presented. The aim of this presentation is to provide a comprehensive review of the *Act* in its first year of operation.

A. Summary of The Nature and Ultimate Resolution of Appeals

Subsection 58(2)(a) of the *Act* requires the Commissioner to summarize the nature and ultimate resolution of appeals. This summary is intended to provide an overview of the appeal process at both the mediation and inquiry stages.

In order to provide the proper context for analysing the appeal process, it is necessary to begin by looking at the initial requests for general records or personal information made to the various ministries and agencies covered by the *Act*. The statistical material provided below, has been gathered from Ontario government institutions pursuant to section 34 of the *Act*, which requires heads of institutions to report the following matters to the Commissioner:

(a) the number of requests for access to records made to the institution;

(b) the number of refusals by the head to disclose a record, the provisions of this *Act* under which

disclosure was refused, and the number of occasions on which each provision was invoked;

(c) for each provision of this *Act* in respect of which an appeal of a decision of a head has been commenced, the number of appeals commenced;

(d) the number of uses or purposes for which personal information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under clauses 45(d) and (e);

(e) the amount of fees collected by the institution under section 57; and

(f) any other information indicating an effort by the institution to put into practice the purposes of this *Act*.

B. Statistics Relating to Requests Received By Ministries and Agencies

The statistics on requests for general records and personal information were obtained from the various institutions, who were individually responsible for collection and tracking. A "Year-End Statistical Report" form was sent by the Commissioner's Office to all institutions, together with a detailed instructional guide. A sample copy of the Year-End Statistical Report may be found in Appendix D.

In addition, the Commissioner's Office developed a computerized tracking program to assist institutions in their data-collection efforts. By using the computerized tracking program, institutions were able to eliminate manual completion of the Year-End form, since the report was automatically printed through the program.

The computerized tracking system was developed with two main objectives in mind: to provide an efficient tool for the management of individual requests and appeals; and to develop a standardized data collection protocol. The standardization of data collection is necessary to ensure that results reported by individual institutions can be aggregated on a consistent basis, thereby enabling meaningful comparisons to be made.

Those institutions which used the computerized tracking system received training and support from staff of the Commissioner's Office, and were provided with software updates as improved features were added throughout the year.

Upon receipt of the data from the institutions, the Commissioner's Office ran a number of error checks to ensure that the figures reported by specific institutions were internally consistent. However, it was not possible to verify the accuracy of actual figures reported by the institutions prior to aggregating them for statistical analysis, and the figures supplied by institutions have been relied on by the Commissioner's Office as being accurate and comprehensive.

Almost 5,000 requests for general records and personal information were made to Ontario government institutions during the first year of the *Act*'s operation. These requests were quite evenly distributed between requests for general records and requests for personal information: 50.8% or 2,432 requests for general records; and 49.2% or 2,352 requests for personal information (including correction requests). Eighty-nine percent or 4,260 out of the 4,784 requests received were also completed in 1988. The remainder (524 requests) were carried over to 1989, the majority of which (388 or 74%) were requests for general records. One hundred and thirty-five personal information requests and one correction request were also carried over to 1989. These data are presented in Table 1.

Most requests -- 79% or 3,774 -- were made to ministries, while 1,010 or 21% were filed with agencies (Table 2). The greatest numbers of requests were filed with the Ministries of Revenue (786) and Correctional Services (777), which together represent roughly one-third of all requests received government-wide (16.4% and 16.2%, respectively). [It should be noted that these figures do not include the number of requests received by agencies of the respective ministries. All agency requests are listed in Table 3.] The next two ministries to which requests were most frequently made were Community and Social Services (362 or 7.6%) and Health (351 or 7.3%). Thus, roughly half of all the general records and personal information requests were made to these four ministries.

The following ministries also received a significant number of requests during 1988: Attorney General (139),

Labour (122), Transportation (122), Solicitor General (120), Education (115), Consumer and Commercial Relations (110), and Government Services (104). The remaining ministries each received fewer than 100 requests. It should be noted that two agencies, Ontario Hydro and the Workers' Compensation Board, each had a significant number of requests: 323 (6.8%) and 264 (5.5%), respectively, ranking immediately below the top four ministries. All other agencies had fewer than 100 requests.

Table 3 contains a detailed breakdown of all of the requests received and completed by the ministries and agencies covered by the *Act* during 1988.

Time Taken to Complete Requests

Section 26 of the *Act* requires institutions to respond to requests within 30 days of the date the request was received (with the exception of extensions for purposes of consultation or a large number of records having to be reviewed). The data contained in Table 4 appear to indicate that this requirement is being met in most cases. The great majority -- 80% of all closed cases -- were completed within the stipulated 30-day period. The figure is somewhat higher for personal information (85.5%) than general records (74%).

Of the remaining 20% of cases, 12.9% were completed between 31 and 60 days; 3.7% between 61 and 90 days; and 3.5% in excess of 90 days. These data may also be found in Table 4.

Dispositions of Requests

In more than three-quarters of the cases -- 77.4% -- all or part of the requested information was disclosed by the institution. Full disclosure was made in 55.7% of the cases, and partial disclosure in 21.7%. In the case of personal information requests, the figures for disclosure were higher -- 90.3%, as opposed to 63.5% for general records. No information was disclosed in 15.6% of all cases (25.4% of general records requests compared to 6.6% of personal information requests), while a refusal to confirm or deny the existence of a record occurred in 6 cases. Requests for information were withdrawn or abandoned in 289 or 6.8% of the cases (11% general records and 3% personal information). These data may be found in Table 5.

Correction Requests

There were 13 requests for corrections to personal information. Corrections were made in 4 cases, and refused in 8. One correction request was withdrawn.

Of the 8 cases in which corrections were refused, 4 led to Statements of Disagreement being attached to the record. In these 4 cases, it was requested that individuals who had come into contact with the record be notified of the Statement of Disagreement (pursuant to subsection 47(2)(c)). Three notifications were actually sent. Please refer to Table 6 for these data.

Fee Estimates and Waivers

The reader is once again asked to note that the Commissioner's Office does not have the means to verify figures relating to fee estimates and waivers; they are simply aggregated from the data reported by the various institutions.

According to the figures supplied by the institutions, charging a fee for requested information, either general records or personal information, was considered and estimated in 455 or 10.7% of all completed cases. The great majority of these cases -- 426 or 93.6% -- involved requests for general records. The government's general policy is that no fees should be charged for requests to access one's own personal information; in fact, there were only 2 cases where fees were collected relating to personal information requests.

Of the 455 cases involving estimates, 126 or 27.7% resulted in the fees being collected in whole, and 7 or 1.5% in the fees being collected in part. In the majority of cases where a fee was estimated (322 or 70.8%), however, fees were completely waived.

Information relating to the amount of fees received from the various institutions in this first year was incomplete and unreliable, and has not been included in this Report.

General records requests accounted for 124 out of the 126 cases where fees were collected in whole, and for all 7 cases where fees were collected in part. Data relating to fees may be found in Table 7.

Reasons for the Collection of Fees

The most frequent reason given for charging fees was to cover costs of reproducing or photocopying the records requested (39% of cases involving fee collection). Other reasons provided by institutions were shipping or mailing charges (17%); preparation time (16.7%); search time (14.9%); and computer costs (8.4%). These data are presented in Table 8.

Types of Requesters

In collecting data on types of requesters, Freedom of Information and Privacy Co-ordinators were required to make subjective categorizations, since requesters were not asked to identify which category of requester they fell into. As a result, these data must be considered more interpretive in nature, since they rely upon someone other than the requester to make the appropriate classification.

The types of requesters will be discussed in the context of general records and personal information separately, since most requesters of personal information are, by definition, individuals. Of those who made requests for general records, almost half -- 47.7% -- were individuals. The next most frequent user of the *Act* for general records was the business sector (12.6% of requests), followed by researchers (10.4%), the media (9.4%), and various associations/organizations (4.9%). A variety of other sources represented the remaining 15% of requesters.

The data on requesters of personal information (including correction requests) are somewhat ambiguous and should be interpreted with caution. The statistics provided by the institutions indicate that individuals were the source of personal information requests in 66.7% of the cases, while "other" sources represent the type of requester in 28.6% of the cases. Associations requested personal information in 4.0% of the cases (possibly on behalf of members of the association). There were 2 requests for personal information from the media and 3 from researchers. It would appear that there may be coding errors relating to the 88 requests (4%) for personal information categorized as being made by businesses. A business wishing to access files about the business would properly fall under a general records request, whereas an individual within a business making a request for personal information should be categorized as an individual requester.

These data included in Table 9, therefore, should be viewed with some caution.

Table 1

Types of Requests for Access

	REQUESTS RECEIVED		REQUESTS COMPLETED		CARRIED OVER TO 1989	
	No.	%	No.	%	No.	%
General Records	2432	50.8	2044	48.0	388	74.0
Personal Information	2338	48.9	2203	51.7	135	25.8
Corrections	14	0.3	13	0.3	1	0.2
TOTAL	**4784**	**100.0**	**4260**	**100.0**	**524**	**100.0**

Table 2

TOTAL Requests Received and Completed

	REQUESTS RECEIVED		REQUESTS COMPLETED	
	No.	%	No.	%
Ministries	3774	78.9	3378	79.3
Agencies	1010	21.1	882	20.7
TOTAL	**4784**	**100.0**	**4260**	**100.0**

Table 3

Requests Received and Completed in 1988

	REQUESTS RECEIVED		REQUESTS COMPLETED	
	No.	%	No.	%
MINISTRIES				
Revenue	786	16.4	756	17.7
Correctional Services	777	16.2	632	14.8
Community & Social Services	362	7.6	342	8.0
Health	351	7.3	318	7.5
Attorney General	139	2.9	130	3.1
Labour	122	2.6	98	2.3
Transportation	122	2.6	110	2.6
Solicitor General	120	2.5	112	2.6
Education	115	2.5	110	2.6
Consumer & Commercial Relations	110	2.3	91	2.1
Government Services	104	2.2	103	2.4
Environment	96	2.0	81	1.9
Industry, Trade, & Technology	79	1.7	76	1.8
Natural Resources	58	1.2	50	1.2
Agriculture & Food	57	1.1	54	1.3
Housing	55	1.1	42	1.0
Financial Institutions	53	1.1	30	0.7
Human Resources Secretariat	50	1.0	47	1.1
Treasury & Economics	46	1.0	45	1.0
Colleges & Universities	26	0.5	22	0.5
Skills Development	24	0.5	24	0.6
Municipal Affairs	21	0.4	18	0.4
Management Board Secretariat	20	0.4	19	0.4
Tourism & Recreation	17	0.4	15	0.4
Cabinet Office	15	0.3	14	0.3
Francophone Affairs	8	0.2	7	0.2
Culture & Communications	7	0.1	4	0.1
Northern Development & Mines	7	0.1	6	0.1
Citizenship	7	0.1	6	0.1
Energy	6	0.1	5	0.1
Intergovernmental Affairs	5	0.1	4	0.1
Office for Senior Citizens	4	0.1	3	0.1
Office Responsible for Disabled Persons	3	0.1	2	0.0
Ontario Advisory Council on Women's Issues	2	0.0	2	0.0
MINISTRY TOTAL	**3774**	**78.9**	**3378**	**79.3**

Table 3 (cont'd.)

AGENCIES	REQUESTS RECEIVED No.	REQUESTS RECEIVED %	REQUESTS COMPLETED No.	REQUESTS COMPLETED %
Ontario Hydro	323	6.8	285	6.7
Workers' Compensation Board	264	5.5	233	5.5
Archives of Ontario	98	2.0	86	2.0
Liquor Control Board of Ontario	47	1.0	36	1.0
Development Corporation (and IOC)	44	0.9	44	1.0
Pension Commission of Ontario	40	0.8	23	0.5
Ontario Human Rights Commission	22	0.5	20	0.5
Ontario Board of Parole	21	0.4	20	0.5
Health Disciplines Board	15	0.3	15	0.4
Ontario Securities Commission	14	0.3	7	0.2
Ontario Graduate Scholarship Selection Board	9	0.2	9	0.2
Social Assistance Review Board	9	0.2	8	0.2
Ontario Waste Management Corporation	9	0.2	9	0.2
Pesticides Advisory Committee	8	0.2	8	0.2
Labour Relations Board	7	0.1	4	0.1
Ontario Police Commission	7	0.1	7	0.2
Ontario Heritage Foundation	6	0.1	5	0.1
Local Housing Authorities	6	0.1	6	0.1
Pay Equity Commission	5	0.1	3	0.1
Go Transit	5	0.1	5	0.1
Residential Rental Standards Board	4	0.1	4	0.1
Criminal Injuries Compensation Board	3	0.1	3	0.1
Ontario Lottery Corporation	3	0.1	3	0.1
Assessment Review Board	2	0.0	2	0.0
Ontario Municipal Board	2	0.0	2	0.0
Minister's Advisory Committee on Corrections	2	0.0	2	0.0
Planning and Implementation Committee	2	0.0	2	0.0
Funeral Services Review Board	2	0.0	2	0.0
Lieutenant Governor's Board of Review	2	0.0	2	0.0
Crown Employees Grievance Settlement Board	2	0.0	2	0.0
Advisory Committee on Crime Prevention	2	0.0	2	0.0
Animal Care Review Board	2	0.0	2	0.0
Coroners' Council	2	0.0	2	0.0
Fire Code Commission	2	0.0	2	0.0
Ontario Police Arbitration Commission	2	0.0	2	0.0
Ontario Place Corporation	2	0.0	2	0.0
Ontario Highway Transport Board	2	0.0	0	0.0
Institutions with 1 request each	13	0.3	13	0.3
AGENCY TOTAL	**1010**	**21.1**	**882**	**20.7**
GRAND TOTAL	**4784**	**100.0**	**4260**	**100.0**

Table 4*

Time Taken To Complete Requests

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	No.	%	No.	%	No.	%
1 -30 days	1513	74.0	1884	85.5	3397	80.0
31-60 days	313	15.3	233	10.6	546	12.9
61-90 days	123	6.0	33	1.5	156	3.7
over 90 days	95	4.6	53	2.4	148	3.5
TOTAL	**2044**	**100.0**	**2203**	**100.0**	**4247**	**100.0**

* **This table excludes correction requests. (The information regarding time to completion was not collected for correction requests.)**

Table 5*

Dispositions of Requests

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	No.	%	No.	%	No.	%
All Disclosed	855	41.8	1512	68.6	2367	55.7
Disclosed in Part	444	21.7	477	21.7	921	21.7
Nothing Disclosed	519	25.4	145	6.6	664	15.6
Withdrawn/Abandoned	224	11.0	65	3.0	289	6.8
Refused to confirm/deny	2	0.1	4	0.2	6	0.1
TOTAL	**2044**	**100.0**	**2203**	**100.0**	**4247**	**100.0**

*** Dispositions of correction requests are given separately (Table 6).**

Table 6

Dispositions of Correction Requests

	No.	%
Correction Made	4	30.8
Correction Refused	8	61.5
Correction WD/Abandoned	1	7.7
TOTAL	**13**	**100.0**

Where Correction Refused:

No. of Statements of Disagreement Attached to Record:	4
Notification of Statement of Disagreement Requested:	4
No. of Notifications Sent:	3

Table 7

Cases In Which Fees Were Estimated

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	No.	%	No.	%	No.	%
Collected in whole	124	29.1	2	6.9	126	27.7
Waived in whole	295	69.2	27	93.1	322	70.8
Waived in part	7	1.6	0	0.0	7	1.5
TOTAL	**426**	**100.0**	**29**	**100.0**	**455**	**100.0**

Table 8

Reasons For Collection of Fees*

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	No.	%	No.	%	No.	%
Reproduction	124	38.8	2	66.7	126	39.0
Shipping	54	16.9	1	33.3	55	17.0
Preparation	54	16.9	0	0.0	54	16.7
Search Time	48	15.0	0	0.0	48	14.9
Computer Costs	27	8.4	0	0.0	27	8.4
Other	13	4.1	0	0.0	13	4.0
TOTAL	**320**	**100.0**	**3**	**100.0**	**323**	**100.0**

*** Multiple reasons for the collection of fees could arise out of each instance in which a collection was considered.**

Table 9*

Types of Requesters

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	No.	%	No.	%	No.	%
Individual	975	47.7	1478	66.7	2456	57.7
Business	258	12.6	88	4.0	346	8.1
Researcher	212	10.4	3	0.1	215	5.0
Media	192	9.4	2	0.1	194	4.6
Association	101	4.9	12	0.4	113	2.7
Other	306	15.0	633	28.6	939	22.0
TOTAL	**2044**	**100.0**	**2216**	**100.0**	**4260**	**100.0**

* **This table includes all completed requests. (Correction requests are included as personal information requests).**

C. Statistics Relating to The Appeal Process

The previous data on requests clearly demonstrates that most requesters received what was asked for; in other words, there was no dispute between the government institution and the requester over whether certain general records or personal information should be disclosed, or, if there was a dispute, it was resolved to the satisfaction of both parties.

To place the data on the appeals in the proper context, it is useful to briefly review how the appeal process works.

The purpose of the appeal process is to provide a dispute resolution mechanism when requesters and institutions cannot agree on the proper interpretation of various provisions of the *Act*. When a request has been denied, it is clear that the government institution has reached the conclusion that one or more of the exemptions provided in the *Act* apply to justify this denial. The *Act* recognizes a *prima facie* right of disclosure by giving the institution the legal burden of proving that a claim for exemption applies.

The *Act* also recognizes that the institution is not the final decision maker; if a requester is not satisfied with the institution's decision, he or she can ask the Commissioner for an independent review. Mediation can often provide a resolution of disputes, and the Commissioner routinely attempts to settle appeals in this manner. An Appeals Officer will enter into informal discussions between the parties and attempt to formulate a compromise. In many cases the Appeals Officer is successful, or at least partially successful, but other appeals require the Commissioner to determine whether the institution has satisfactorily established the grounds for denying disclosure. These latter cases are resolved by way of inquiry by the Commissioner and the issuance of a binding order.

By the time that an appeal reaches the inquiry stage, there has been considerable airing of the issues, and a great deal of effort has gone into settling the appeal. In many cases, the requester has received some, perhaps even a significant amount of information directly from the institution. During the mediation process, the requester will often receive more information. As a result, the scope of the Commissioner's inquiry may involve a relatively small portion of the records originally requested, and generally the order will not reflect the extent to which the requester has succeeded in obtaining information under the *Act*. The data that follows should be read in this context.

In the first year of operation, 350 appeals were made to the Commissioner under the *Act*. This represented a weekly average of 6.7 appeals, and a monthly average of 29.2. Only four or 1.1% of all the appeals were filed in person; the remainder were received by mail.

Twenty percent of these 350 appeals were received before the institution had made a final decision regarding the request. They included appeals dealing with preliminary matters such as fee estimates or the possible release of third party information. In the remaining 80% of the cases, the average time between the head's decision and the filing of an appeal was 25 days. Notices of Appeal were sent by the Commissioner's Office to both the head and the appellant an average of 4.5 days after receipt of the appeal.

Roughly 90% of appeals filed in the first year arose from requests made to ministries, as opposed to agencies. This statistic is similar to the breakdown of requests received by government institutions during 1988, when roughly 80% of requests were filed with ministries. A detailed breakdown of appeals involving various ministries and agencies may be found in Table 10 and Figure1.

Specific Institutions

The greatest numbers of appeals involved the Ministries of Correctional Services (59 appeals or 16.9%) and Health (45 appeals or 12.9%). This is understandable since these two institutions received the 2nd and 4th largest number of requests under the *Act*. It should also be noted that 31 of the 59 appeals relating to Correctional Services involved the same issue, but with multiple appellants.

There were also a considerable number of appeals arising out of requests made to the following institutions: Solicitor General (29 or 8.3%); Labour (27 or 7.7%); Community and Social Services (25 or 7.1%); Attorney General (21 or 6.0%); and Agriculture and Food (17 or 4.9%). The remaining institutions each had fewer than 14 or 4% of the total number of appeals filed during 1988. Table 10 outlines details of the various ministries and agencies involved in appeals, and Figure 1 provides a graphic presentation of these data.

General Records and Personal Information Appeals

The 350 appeals were divided approximately 3:1 between general records and personal information or corrections: 259 appeals or 74% related to requests for general records; 86 or 24.6% involved personal information requests; and 5 or 1.4% dealt with corrections to personal information. These data may be found in Table 11.

This 3:1 breakdown for appeals is quite different from the comparable figures relating to requests. At the request level, the division between requests for general records and personal information was approximately equal: 50.8% for general records and 49.2% for personal information.

Types of Decisions Appealed

Table 12 outlines the various types of decisions appealed to the Commissioner. These data are divided between general records requests and personal information requests, however, the discussion that follows pertains to the data in total.

The most frequent type of appealed decision involved refusal of access to information. A total of 56.6% of appeals dealt with situations where access was refused either in whole (24.9%) or in part (31.7%). Other types of decisions which were the subject of appeals were: the record does not exist (21.7%); fees (12.6%); release of third party information (4.3%); time extensions (2.9%); the method of access to a record, either obtaining the original or a copy (2.3%); refusal to confirm or deny the existence of a record (1.7%); and refusal of a correction request (1.4%).

Dispositions of Appealed Cases

The remaining statistics deal only with the 198 appeals completed during 1988. This figure represents 56.6% of all appeals filed with the Commissioner's Office during the first year of operation.

The completed appeals are broken down between those which were disposed of at the mediation stage and those which continued to the inquiry stage. Table 13 shows that 105 or 53% of the closed cases were completed at the mediation stage, compared to 93 or 47% which were disposed of at the inquiry stage.

If we examine the 105 cases completed during the mediation stage, the great majority -- 87 or 82.9% -- were settled; 6.7% were determined to be non-jurisdictional cases; 9.5% were withdrawn; and 1 case was abandoned.

Mediated Cases

Of the 87 cases settled during mediation, roughly half (43) were resolved through a settlement between the government institution and the appellant, which resulted in the appellant receiving more information than he or she had received prior to filing the appeal. The remaining 44 cases were settled as a result of an Appeals Officer explaining the provisions of the *Act* to the satisfaction of the appellant. These data may be found in Tables 14 and 15.

Inquiries

Of the 93 cases resolved at the inquiry stage, 79 or 84.9% were disposed of by an order of the Commissioner. Settlements were reached in 8 of these cases, and 6 appeals were withdrawn at this stage. Table 16 outlines these data, and also provides a breakdown between requester appellants and third party appellants.

The great majority of the 79 cases disposed of by Commissioner's order -- 70 or 88.6% -- involved written, as opposed to oral representations, by the parties to the appeal.

Orders

The 79 appeals resolved by order during 1988 actually translate to 36 orders issued by the Commissioner. The reasons for this are that a single order is issued in cases involving either: (1) multiple appellants involved in cases dealing with identical issues; or (2) multiple appeals which are inter-related. For example, one order involved 31 different appellants all concerned with the same issue. In another case, an institution decided to

release information concerning more than one individual, resulting in multiple appeals for different reasons. The Commissioner's order in this case disposed of 10 appeals.

In just over two-thirds of the orders -- 25 or 67.6% -- the head's decision was upheld. The decision was partially upheld in 5 or 13.5%, and not upheld in 18.9% or 7 of these orders. It should be noted that one order involving two appellants resulted in two separate dispositions. This explains why the total number of dispositions relating to orders is 37.

As previously noted, a decision by the Commissioner to uphold a head's decision does not mean that the appellant received none of the originally requested information. Requesters often seek several records from an institution. They may obtain some of those records through an initial decision by the institution and more during the mediation process. It is only the remaining records on which a settlement cannot be reached that become the subject matter of an inquiry by the Commissioner.

Compliance With Orders

In cases where institutions are ordered to comply with the Commissioner's decision they are provided with an implementation time limit (anywhere from 5 to 30 days) and required to advise the Commissioner's Office when the order has been complied with. These requirements were satisfied in 100% of all orders issued during 1988. The most frequent implementation period imposed by the Commissioner was 20 days, which occurred in 81.3% of the cases.

Types of Requesters

The *Act* does not require requesters to provide information about themselves when filing appeals. On the contrary, the *Act*, by its very nature, acknowledges the need to protect personal information. As a result, efforts to identify the various types of requesters who filed appeals necessarily involves an element of subjectivity. The data that follows should be read with this in mind.

Individuals represented the largest number of appellants, filing 62.5% of all appeals. Researchers represented the next most frequent group at 13.8%, followed by representatives of businesses at 6.0%, and the media at 5.7%. It should also be noted that the vast majority of appellants filed and conducted appeals on their own; only 4.3% of appeals involved agents. These data may be found in Table 17.

Table 10

Ministries and Agencies Involved in Cases Appealed

	TOTAL	
	No.	%
MINISTRIES		
Correctional Services	59	16.9
Health	45	12.9
Solicitor General	29	8.3
Labour	27	7.7
Community & Social Services	25	7.1
Attorney General	21	6.0
Agriculture & Food	17	4.9
Environment	13	3.7
Transportation	12	3.4
Consumer & Commercial Relations	11	3.1
Industry, Trade & Technology	11	3.1
Education	8	2.3
Financial Institutions	8	2.3
Revenue	6	1.7
Skills Development	5	1.4
Natural Resources	4	1.1
Municipal Affairs	3	0.9
Management Board Secretariat	2	0.6
Tourism & Recreation	2	0.6
Treasury & Economics	2	0.6
Cabinet Office	1	0.3
Colleges & Universities	1	0.3
Culture & Communications	1	0.3
Government Services	1	0.3
TOTAL MINISTRIES:	**314**	**89.7**
AGENCIES		
Workers' Compensation Board	11	3.1
Ontario Hydro	8	2.3
Archives of Ontario	6	1.7
Ontario Human Rights Commission	3	0.9
Liquor Control Board of Ontario	2	0.6
Ontario Labour Relations Board	2	0.6
Ontario Waste Management Corporation	2	0.6
Stadium Corporation of Ontario Ltd.	2	0.6
TOTAL AGENCIES:	**36**	**10.3**
GRAND TOTAL:	**350**	**100.0**

Figure 1
MINISTRY AND AGENCY APPEALS
(350)

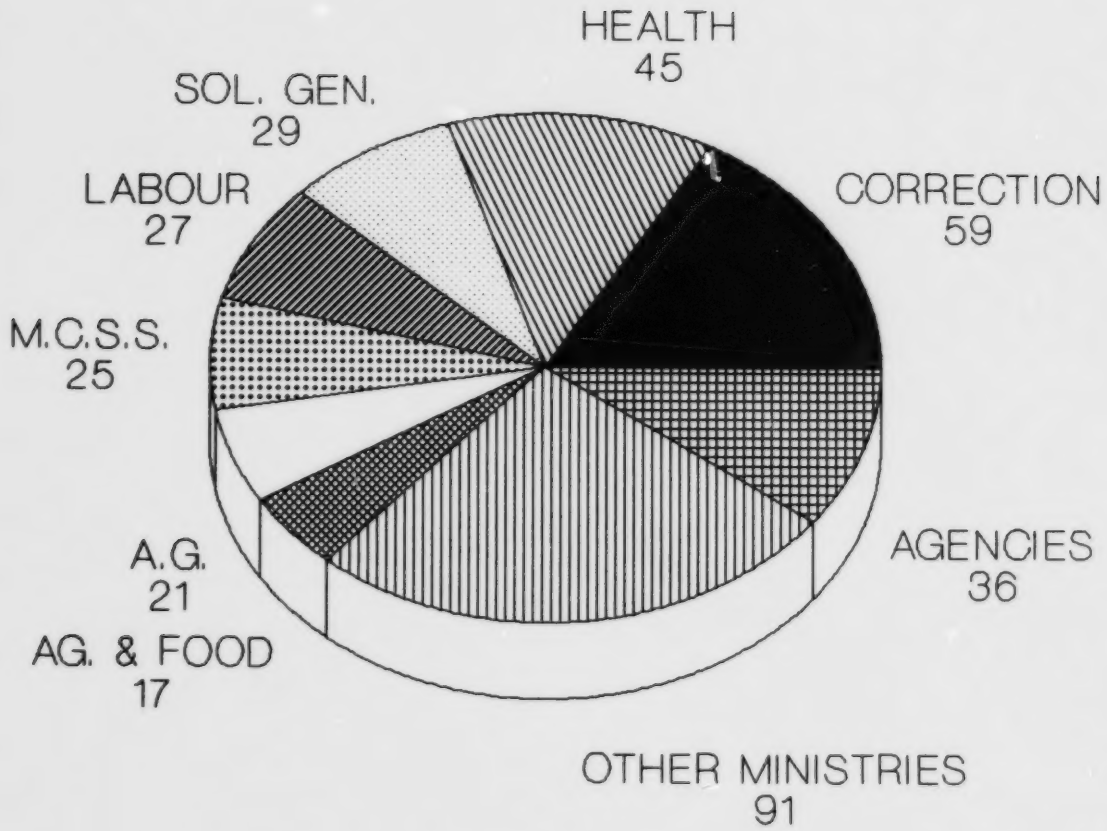


Table 11

Request Type Involved in Appeals

	No.	%
General Records	259	74.0
Personal Information	86	24.6
Corrections	5	1.4
TOTAL	**350**	**100.0**

Table 12

Types of Decisions Appealed

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL REQUESTS	
	No.	%	No.	%	No.	%
Access refused in part	67	25.9	44	48.4	111	31.7
Access refused in whole	67	25.9	20	22.0	87	24.9
No record exists	61	23.6	15	16.5	76	21.7
Fees/fee estimate	43	16.6	1	1.1	44	12.6
Third party information	15	6.0	0	0.0	15	4.3
Time extensions	7	2.7	3	3.3	10	2.9
Method of access	7	2.7	1	1.1	8	2.3
Refused to confirm/deny	3	1.2	3	3.3	6	1.7
Correction(s) refused	0	0.0	5	5.5	5	1.4
Other	13	5.0	4	4.4	17	4.9
TOTAL APPEALS	**283**	**109.6**	**96**	**105.6**	**379**	**108.4**

Note: The total number of decisions appealed exceeds 100% due to the fact that some cases involved the appeal of more than one decision. The percentages reported above reflect the number of times each decision was appealed.

Table 13
CLOSED CASES: Stage at Which Appeal Disposed

	No.	%
Mediation Stage	105	53.0
Inquiry Stage	93	47.0
TOTAL	**198**	**100.0**

Table 14
Mediation Stage

	No.	%
Settled	87	82.9
Non-jurisdictional	7	6.7
Withdrawn	10	9.5
Abandoned	1	0.9
Mediated Cases	105	100.0

Table 15
How Cases Settled at Mediation

	No.	%
Appellant received more information	43	49.4
Explanation of the Act satisfied appellant	44	50.6
TOTAL	**87**	**100.0**

Table 16

Total Dispositions of All Appeals

	REQUESTER APPEAL		THIRD PARTY APPEAL		TOTAL	
	No.	%	No.	%	No.	%
Mediation Stage						
Settled	86	45.5	1	11.1	87	43.9
Non-jurisdictional	7	3.7	0	0.0	7	3.5
Withdrawn	10	5.3	0	0.0	10	5.1
Abandoned	1	0.5	0	0.0	1	0.5
Mediation Cases	**104**	**55.0**	**1**	**11.1**	**105**	**53.0**
Inquiry Stage						
Orders						
Head's Decision Upheld	55	29.1	8	88.9	63	31.8
Head's Decision Partly Upheld	5	2.6	0	0.0	5	2.5
Head's Decision Not Upheld	11	5.8	0	0.0	11	5.6
Ordered Cases	71	37.6	8	88.9	79	39.9
Withdrawn	6	3.2	0	0.0	6	3.1
Settled	8	4.2	0	0.0	8	4.0
Inquiry Cases	**85**	**45.0**	**8**	**88.9**	**93**	**47.0**
TOTAL CLOSED CASES	**189**	**100.0**	**9**	**100.0**	**198**	**100.0**

Table 17

Types of Requesters Involved in Appeals

	GENERAL RECORDS		PERSONAL * INFORMATION		TOTAL REQUESTS	
	No.	%	No	%	No.	%
Individual	135	52.1	91	100.0	226	62.5
Researcher	48	18.5	0	0.0	48	13.8
Business	21	8.1	0	0.0	21	6.0
Media	19	7.4	0	0.0	19	5.7
Agent	18	6.9	0	0.0	18	4.3
Other	18	6.9	0	0.0	18	7.7
TOTAL	**259**	**100.0**	**91**	**100.0**	**350**	**100.0**

*** Since the requester in all Personal Information and Correction requests is the individual or an authorized representative, all requesters are treated as individuals.**

D. Compliance With the *Act*

Appeals

Section 58(2)(b) of the *Act* requires the Commissioner to assess the extent to which institutions are complying with the *Freedom of Information and Protection of Privacy Act, 1987.*

Owing to a lapse of approximately two years between the time Bill 34 was introduced in the Legislature and passed into law, government ministries and agencies were able to prepare for the eventual implementation of the new *Act*. The Management Board of Cabinet's Freedom of Information and Privacy Branch was responsible for training Information and Privacy Co-ordinators throughout the government, and for generally ensuring that the *Act* was operational and requests could be processed without delay when the *Act* came into force on January 1, 1988.

The Commissioner's Office, on the other hand, did not have as much lead time, and was without offices and staff until November of 1987. In developing policies and procedures to deal with the appeal process, it became evident that the smooth handling of appeals was dependent, to a large extent, on co-operation between the Commissioner's Office and the various ministries and agencies covered by the *Act*. One of the major areas of interaction between the various institutions and the Commissioner's Office is mediation.

In order for mediation to be effective, the Commissioner's Office must have complete access to all relevant records under appeal. Institutions must also adopt both a flexible attitude toward the mediation process itself, and internal procedures which facilitate, rather than delay, the resolution of appeals. For the most part, Information and Privacy Co-ordinators, Deputy Ministers and other staff of the various institutions have recognized the need for an effective appeal process and have approached the first year of operation with a spirit of co-operation.

Privacy Protection

During the first year, the Commissioner's Office dealt with a number of issues related to the protection of personal privacy.

With the passage of the *Act*, a number of individuals availed themselves of their new rights regarding the adequate protection of government-held personal information. Complaints were filed with the Commissioner's Office, resulting in investigations of various practices followed by institutions.

In some instances the results of investigations determined that record-keeping practices were authorized by statute. For example:

- the requirement that the date of birth be collected on forms relating to the purchase or sale of real estate;
- the authorization for the Ministry of Community and Social Services to transfer personal information regarding benefit recipients to municipalities;
- the right to print personal information on municipal enumeration notices.

In another instance, investigation confirmed that the government payroll system uses employees' dates of birth and Social Insurance Numbers on attendance reports. The Ministry of Government Services agreed to stop using employees' birth dates and to investigate the possibility of eliminating the use of the SIN. In any event, the Ministry will be asked to distribute attendance reports in envelopes to prevent undue public exposure of any personal information.

A more detailed investigation was conducted in response to complaints received from applicants for Workers' Compensation benefits, who felt that their prior consent should be required before the Workers' Compensation Board (WCB) provided employers with access to employee medical records. Our investigation determined that section 77 of the *Workers' Compensation Act* authorizes the disclosure of this type of personal information to the employer if there is an issue in dispute before the Board. In order to address this seeming inconsistency with the principles of the *Freedom of Information and*

Protection of Privacy Act, 1987, the WCB, in consultation with the Commissioner's Office designed a new notice procedure whereby individuals would be advised whenever access was provided to employers under section 77. The Board also subsequently developed and issued revised policy guidelines and an accompanying manual to assist Board staff in implementing this new policy.

In February of 1988 an incident occurred which raised potentially serious privacy concerns. Files containing telexes and other information were discovered in a public hallway at Queen's Park. These documents contained confidential information relating to child abuse cases which had been provided to the Ministry of Community and Social Services by the British Columbia provincial government. The Ontario Provincial Police, and the Ministries of Community and Social Services and Government Services (which is responsible for electronic mail handling) all conducted investigations. The OPP found there was no criminal offense committed, but the Ministry of Government Services determined that their internal procedures were not adequate to meet the standards of protection required by the *Freedom of Information and Protection of Privacy Act, 1987*. The Commissioner's Office reviewed these three reports and concluded that the incident was caused by: (1) inadequate security provisions; (2) insufficient storage space, leading to the improper use of public areas for storage purposes; and (3) poor retention and disposal schedules. The Commissioner's Office consulted with the Ministry of Government Services on the design and implementation of procedures and security measures required to prevent future problems of this nature. The Commissioner commended the Ministry for its prompt response, and also welcomed the issuance of Ontario Regulation 15/89 by Management Board of Cabinet which deals with the disposal of personal information.

E. Commissioner's Recommendations

During the *Act*'s first year of operation, institutions were required to spend considerable time developing practices and procedures to effectively respond to the new rights provided to the public under the legislation. The Commissioner's Office will continue to monitor these practices, and will consult with individual institutions whenever particular procedures conflict with the principles of the *Act*.

Over the past year, the Commissioner has issued a number of orders which include recommendations directed at specific practices or procedures employed by particular institutions. These recommendations have been made in an effort to provide individual institutions with direction in dealing with certain types of requests, and, more generally, to encourage institutions to adopt uniform approaches to various provisions of the *Act*. Some of the more significant recommendations are summarized below.

Section 57 of the *Act* permits an institution to charge fees for certain activities related to locating and providing access to requested records. The *Act* also permits the government to set the rates for these fees by regulation. Ontario Regulation 532/87 allows an institution to charge $0.20 for each page of photocopying required to produce a record. In the Commissioner's view, this charge must be interpreted by institutions as a maximum limit. If the government's intention is not to use fees as an additional source of revenue, then institutions should take care to restrict photocopying charges to their actual costs of reproduction.

A related issue is the question of a threshold fee. In the Commissioner's view the threshold level should not be arbitrarily set. Rather, the institution should determine the point at which the administrative costs of collecting fees exceeds the amount of the fees claimed and that figure should be used as a threshold or minimum fee for all institutions.

In another order dealing with fees, the Commissioner emphasized that the *Act* provides a head with discretion to charge a fee or not, and whenever a fee is contemplated, one of the questions a head should ask is: are these costs legitimate and ones which the requester should bear?

The Commissioner also expressed the view that the provisions of the *Act* and regulations relating to fees should be construed to mean that only appropriate and necessary costs should be included in the final charge. The authority to charge a fee should not be viewed by institutions as an opportunity to charge for every conceivable activity undertaken by an institution to prepare the record for disclosure.

When requesters make broadly-worded requests for records, the Commissioner recommended that the institution not unilaterally determine what records the re-

quester wants. The institution has an obligation to discuss an ambiguous or broadly-worded request for records with individual requesters to more precisely determine the scope of the request.

In situations where an institution has agreed to allow an individual access to his or her own personal information, in the Commissioner's view, the institution is responsible for verifying the identity of the individual. If the individual personally attends at the institution, there are usually straightforward ways of providing verification. However, the situation is more difficult if an individual cannot or does not want to pick up the information in person, and insists on receiving the personal information by mail or other means. The Commissioner believes that institutions should adopt a flexible approach to such demands, while at the same time taking all reasonable steps to verify the identity of the requester. To ensure that individuals recognize the inherent risks in sending personal information by mail, the Commissioner recommended that the personal information request form (issued by Management Board of Cabinet) be amended to include a section that permits a requester to choose one of the following methods of access, listed in descending order of security protection:

- examination on site, or receive a copy;
- receiving a copy by delivery that requires signature on receipt;
- receiving copy by ordinary mail; or
- by other arrangements with the institution.

If a requester is denied access to a record or to his or her own personal information, sections 28 and 48 of the *Act* require the institution to notify the requester of the head's decision. The Commissioner commented in one order that institutions should not take a narrow interpretation of the notice requirements. The institution has an obligation to fully apprise the requester of the details of the institution's reasons for dealing with the record in a certain manner.

A number of the Commissioner's orders dealt with issues relating to the government's records management policies and practices. In order to effectively manage the massive volumes of records held by various government institutions, it is vital that proper records management policies relating to retention and disposal practices be adopted and applied on a consistent basis by all institutions. Institutions must also ensure that these policies are clearly understood by all relevant personnel.

In one appeal dealing with personal information banks, the Commissioner advised the institution to develop clearly-stated guidelines regarding records retention schedules, particularly where the institution adopts practices that go beyond the minimum requirements established by regulation.

In another order, the Commissioner emphasized that good record keeping practices are an essential element in the effective implementation of the *Act*. This observation was prompted by a situation where a requested record was "lost" by the institution, though clear evidence indicated that the record should exist. The Commissioner indicated that he intends to work closely with institutions to determine ways of improving records management systems throughout the government.

In order to provide access to general records or personal information, the *Act* provides that an institution must have "custody or control" of the record. In some circumstances, records are created for an institution by a third party, and there have been instances where inadequate procedures have resulted in institutions losing custody or control of these types of records. In one case, the Commissioner recommended that institutions develop clear policies which ensure that records created by third parties are not "lost", thereby, in effect, denying the requester the right of access.

The preceding recommendations, and others contained in various orders of the Commissioner, require institutions to set a high standard of service to the public in addressing the requirements of the *Act*. To meet this standard, it is necessary for institutions to devote time, energy and resources. The goals and objectives of the *Freedom of Information and Protection of Privacy Act* can only be achieved if adequate financial and human resource commitments are made, particularly as they relate to the work of Information and Privacy Co-ordinators, whose dedicated efforts are integral to the overall success of the *Act*.

SECTION 59: OTHER ACTIVITIES

Subsection 59(a) of the *Act* gives the Commissioner authority to comment on the privacy protection implications of proposed legislative schemes or government programs.

During the course of 1988, the Commissioner's Office provided comment on Bill 147, the *Independent Health Facilities Act*, as well as proposed amendments to the *Childrens' Services Act* dealing with information collected and disclosed by Childrens' Aid Societies. The Commissioner is also monitoring the preparation and consultations initiated by the Ministry of Health in developing its omnibus health-care information legislation.

The Commissioner is also authorized, under subsection 59(c) of the *Act*, to permit the collection of personal information otherwise than directly from the individual. The Ministry of Community and Social Services asked for and received permission to collect personal information indirectly from municipalities in one specific instance. The Ministry had provided municipalities with funding for a particular project, and required the local bodies to collect information for program evaluation purposes. In order to complete its own evaluation of the project, the Ministry sought access to the information collected by the municipalities. The Commissioner thought the request was reasonable in these circumstances, and authorized indirect collection.

Another request for indirect collection was initiated by the Ministry of Treasury and Economics, dealing with a data-matching project involving federal income tax data. Consideration of this request is ongoing, pending receipt of written submissions from the Ministry.

An independent public opinion poll conducted in March of 1987 found that the majority of Ontario residents (71%) were concerned about the confidentiality of personal information collected by the provincial government. The public's concern was stronger regarding government-held information than for personal information collected by other organizations such as banks and insurance companies. One of the major factors contributing to this concern was the use of computer technology. The majority of respondents (77%) believed that "as long as information is stored on computers, we can never be sure of our guarantee to privacy". Technological advancement, particularly as it relates to the collection and use of personal information, will be of increasing importance and interest to the Commissioner's Office in the months and years ahead.

Section 59(e) of the *Act* gives the Commissioner authority to conduct public education programs concerning the *Act* and the work of the Commissioner's Office. In order to assess the public's awareness of the *Act* and design an outreach and education program, the agency commissioned a survey in January of 1988. The results indicate that the vast majority (83%) of those surveyed thought that the *Act* was a good idea. Ninety-four percent of respondents indicated that their individual privacy and the protection of their personal information held by the government was important; 73% felt that it was very important. Three-quarters of those surveyed felt that the protection of individual privacy was more important than having the right to access government information. This may partially explain why 7 out of 10 people believe that the government had a right, or in some cases an obligation, to keep certain kinds of information confidential. Seventy-eight percent of respondents also thought that extending the legislation to cover municipalities was a good idea.

A number of outreach projects have been undertaken during the past year.

1) A brochure was printed and widely distributed throughout Ontario, outlining the *Act* and the role of the Commissioner as the appeal body.

2) A quarterly "Newsletter" is published, as well as "Summaries of Appeals" which are issued every six weeks. The former provides general information on the work of the Office, while the latter summarizes the Commissioner's Orders and selected settled cases.

3) A 15-minute videotape has been produced, which describes the *Act* and the role of the Commissioner. The videotape is available for presentations by staff, and for viewing by interested organizations.

4) The Proceedings of the Conference on Freedom of Information and Protection of Privacy in Ontario, sponsored by Management Board of Cabinet on November 22-23, 1988, have been printed and are available for purchase through Publications Ontario.

The Commissioner and staff members have spoken to various groups over the past year, including:

Ontario Psychological Association
Ontario Securities Commission
Colleges of Applied Arts and Technology
Rent Review Hearings Board
C.B.A.O.- Labour Law Sub-section
C.B.A.O.- Administrative Law Section
C.B.A.O.- Research and Policy Analysis Section
C.B.A.O.- Young Lawyers' Division
Ryerson School of Journalism
Canadian Information Processing Society
CIPS, Security Interest Group
City of Toronto
Ontario Systems Council
Personnel Association of Ontario
American Society of Access Professionals
Database Association (Ontario)
The Council of Information and Referral Services
Pay Equity Commission
Association of Records Managers and Administrators
Queen's Park Press Gallery
Toronto Association of Law Libraries
Canadian Public Personnel Management Association
Association of Clerks-Treasurers of Hastings County
Regional Municipality of Ottawa-Carleton
City of Ottawa
Town of Gloucester
Loyalist College

Telephone Tracking

The agency has established a toll-free telephone number which members of the public can call to obtain information regarding the operation of the Act and the work of the Commissioner's Office.

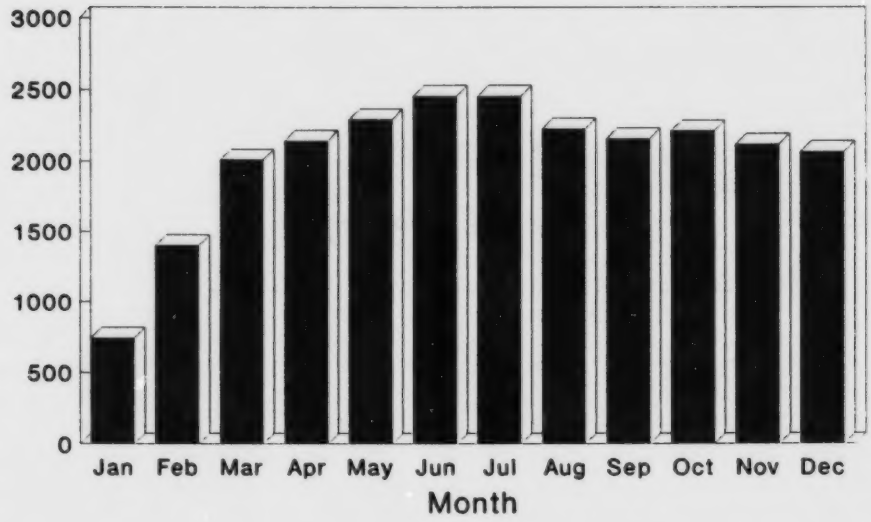
During 1988 a total of 24,283 telephone calls were received by the Commissioner's Office. As might be expected, the number of calls increased dramatically during the first 4 months of operation before leveling off over the summer months to approximately 2,000 calls per month.

Of these calls, a total of 1,111 were categorized as general information calls requiring the assistance of an Information Officer. The majority of these inquiries were from individuals (69%), followed by calls from within government (11%), business (9%), the media (3%), organizations (3%) and other callers (2%). The pattern for these information calls during 1988 is reflected in Figure 2.

Figure 2

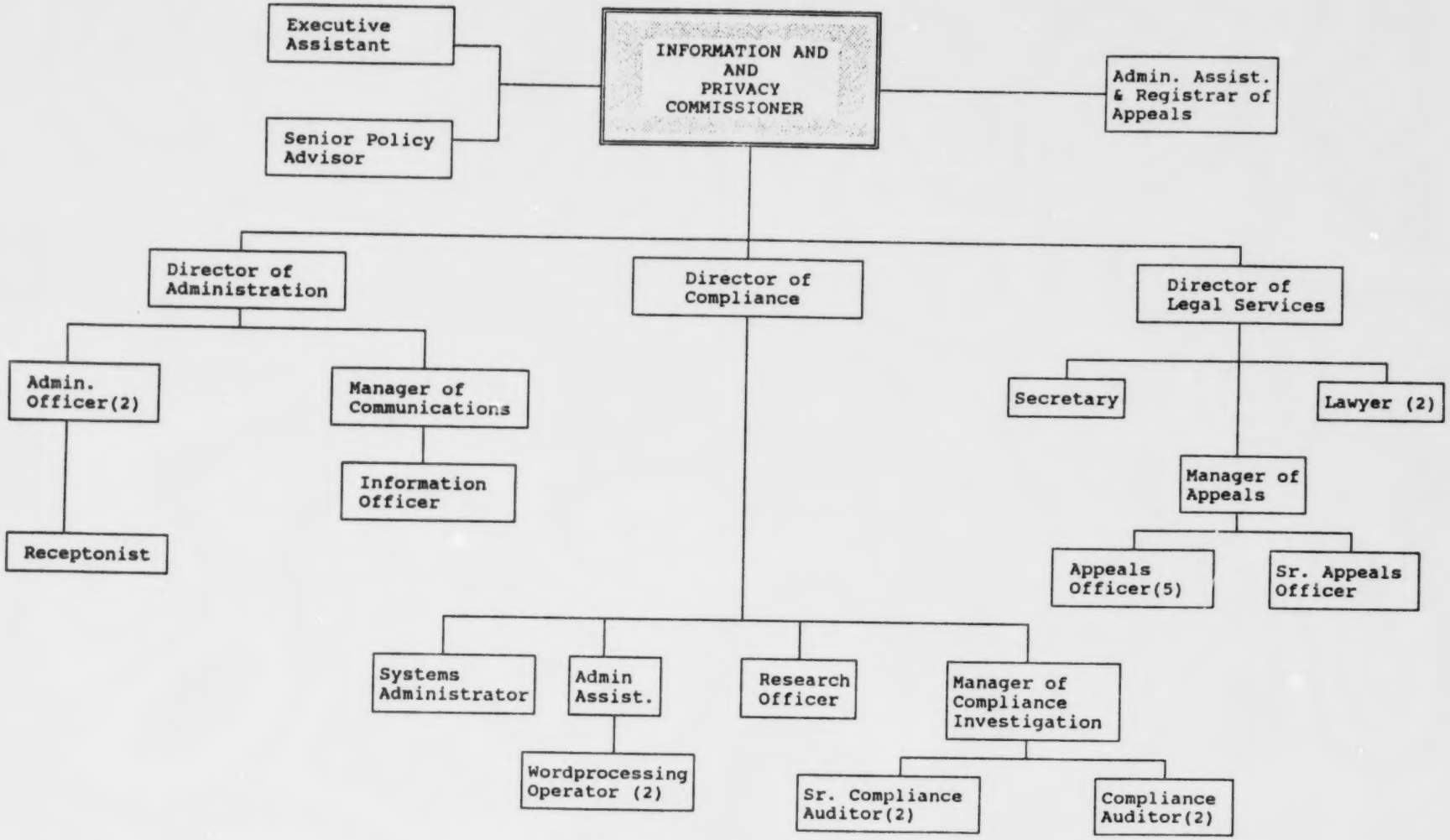
Monthly Telephone Tracking

1988 Calls through Switchboard (24,283)



Appendix A

Organization Chart


Executive Assistant
Senior Policy Advisor
INFORMATION AND AND PRIVACY COMMISSIONER
Admin. Assist. & Registrar of Appeals
Director of Administration
Director of Compliance
Director of Legal Services
Admin. Officer(2)
Manager of Communications
Information Officer
Receptonist
Secretary
Lawyer (2)
Manager of Appeals
Appeals Officer(5)
Sr. Appeals Officer
Systems Administrator
Admin Assist.
Wordprocessing Operator (2)
Research Officer
Manager of Compliance Investigation
Sr. Compliance Auditor(2)
Compliance Auditor(2)

Appendix B

Financial Statements 1987 -88

Ontario

OFFICE OF THE PROVINCIAL AUDITOR

Box 105, 15th Floor, 20 Dundas St. West
Toronto, Ontario M5G 2C2
(416) 973-9866

To the Information and Privacy Commissioner
and to the Speaker of the Assembly.

I have examined the statement of expenditure of the Office of the Information and Privacy Commissioner for the eight month period ended March 31, 1988. My examination was made in accordance with generally accepted auditing standards, and accordingly included such tests and other procedures as I considered necessary in the circumstances.

In my opinion, this financial statement presents fairly the expenditure of the Office of the Information and Privacy Commissioner for the eight month period ended March 31, 1988 in accordance with the accounting policies described in note 2 to the financial statement.

J.F. Otterman

J.F. Otterman, F.C.A.,
Assistant Provincial Auditor.

Toronto, Ontario,
July 28, 1988.

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Financial Statement for the eight month period ended March 31, 1988

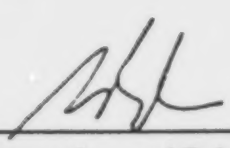
OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Statement of Expenditure
for the eight month period ended March 31, 1988
(note 4)

	1988 $
Salaries and wages	202,346
Employee benefits (note 5)	18,867
Transportation and communication	11,144
Services	197,789
Supplies and equipment	166,001
	596,147

See accompanying notes to financial statement.

Approved :



Information and Privacy Commissioner

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Notes to Financial Statement
March 31, 1988

1. GENERAL

The Information and Privacy Commissioner is responsible for ensuring that Ontario government institutions comply with the Freedom of Information and Protection of Privacy Act, 1987 and apply the standards of privacy protection set out in the Act. As Commissioner, he may review decisions made by government institutions where access to information has been denied to a member of the public. Upon investigating the circumstances of the appeal, he has the final authority to deny or to order the disclosure of the requested information.

2. SIGNIFICANT ACCOUNTING POLICIES

(a) Basis of accounting

The Office uses a cash basis of accounting modified to allow an additional 22 days to pay for debts incurred during the period just ended.

(b) Fixed assets

Expenditures on fixed assets are expensed in the year of acquisition.

3. REPORTING PERIOD

This financial statement covers the Office's first period of operations from August 4, 1987 to March 31, 1988.

4. EXPENDITURE

Expenses are paid out of moneys appropriated therefor by the Legislature of the Province of Ontario.

5. PENSION PLAN

The Office of the Information and Privacy Commissioner provides pension benefits for substantially all its permanent employees through participation in the Public Service Superannuation Fund and Superannuation Adjustment Fund established by the Province of Ontario. The Office's share of contributions to these Funds during the period was $5,200. This amount represents the total obligation of the Office of the Information and Privacy Commissioner and is included in employee benefits.

Appendix C

Financial Statements 1988-89

Ontario

OFFICE OF THE PROVINCIAL AUDITOR

Box 105, 15th Floor, 20 Dundas St. West
Toronto, Ontario M5G 2C2
(416) 974-9866

To the Information and Privacy Commissioner
and to the Speaker of the Assembly.

I have examined the statement of expenditure of the Office of the Information and Privacy Commissioner for the year ended March 31, 1989. My examination was made in accordance with generally accepted auditing standards, and accordingly included such tests and other procedures as I considered necessary in the circumstances.

In my opinion, this financial statement presents fairly the expenditure of the Office of the Information and Privacy Commissioner for the year ended March 31, 1989 in accordance with the accounting policies described in note 2 to the financial statement applied on a basis consistent with that of the preceding eight month period.

J.F. Otterman

J.F. Otterman, F.C.A.,
Assistant Provincial Auditor.

Toronto, Ontario,
June 6, 1989

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Financial Statement
for the year ended March 31, 1989

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Statement of Expenditure
for the year ended March 31, 1989
(Note 4)

	1989 $	1988 $ (Note 3)
Salaries and wages	1,331,701	202,346
Employee benefits (note 5)	154,496	18,867
Transportation and communication	64,599	11,144
Services	453,121	197,789
Supplies and equipment	398,282	166,001
	2,402,199	596,147

See accompanying notes to financial statement.

Approved :

Commissioner

General Manager

Information and Privacy Commissioner

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Notes to Financial Statement
March 31, 1989

1. GENERAL

The Information and Privacy Commissioner is responsible for ensuring that Ontario government institutions comply with the Freedom of Information and Protection of Privacy Act, 1987 and apply the standards of privacy protection set out in the Act. As Commissioner, he may review decisions made by government institutions where access to information has been denied to a member of the public. Upon investigating the circumstances of the appeal, he has the final authority to deny or to order the disclosure of the requested information.

2. SIGNIFICANT ACCOUNTING POLICIES

(a) Basis of accounting

The Office uses a cash basis of accounting modified to allow an additional 22 days to pay for debts incurred during the period just ended.

(b) Fixed assets

Expenditures on fixed assets are expensed in the year of acquisition.

3. COMPARATIVE FIGURES

The comparative figures cover the Office's first period of operations from August 4, 1987 to March 31, 1988.

4. EXPENDITURE

Expenses are paid out of moneys appropriated therefor by the Legislature of the Province of Ontario.

5. PENSION PLAN

The Office of the Information and Privacy Commissioner provides pension benefits for substantially all its permanent employees through participation in the Public Service Superannuation Fund and Superannuation Adjustment Fund established by the Province of Ontario. Pension benefits for the Information and Privacy Commissioner are provided through the Legislative Assembly Retirement Allowance Account. The Office's share of contributions to these Funds and Account during the period was $79,100. This amount represents the total obligation of the Office of the Information and Privacy Commissioner and is included in employee benefits.

Appendix D

Year-End Statistical Report

STATISTICAL REPORT FOR THE INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

SECTION 1

INSTITUTION: _____

Please indicate whether your institution is a Ministry or an Agency:

[ ] Ministry
[ ] Agency

Total Number of employees in Ministry or Agency: _____

Did your Institution receive at least one request for access to information (general records or personal information) or process any appeals?

[ ] NO (Skip to section 16)
[ ] YES (Continue)

SECTION 2

Number of Requests and Transfers

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
Requests completed in 1988	___	_____	___	_____	___	_____
Requests carried over to 1989	___	_____	___	_____	___	_____
Total requests received in 1988	___	100.0	___	100.0	___	100.0
Number of requests transferred to other institutions:	___		___		___	
TOTAL REQUEST SUBMISSIONS:	___		___		___	
Number of requests returned due to insufficient detail:	___		___		___	

THE REMAINING STATISTICS ARE BASED ON CASES COMPLETED IN 1988:

SECTION 3

Source of Request

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
Media	___	_____	___	_____	___	_____
Researcher	___	_____	___	_____	___	_____
Business	___	_____	___	_____	___	_____
Association	___	_____	___	_____	___	_____
Individual	___	_____	___	_____	___	_____
Other	___	_____	___	_____	___	_____
Unknown	___	_____	___	_____	___	_____
Total	___	100.0	___	100.0	___	100.0

SECTION 4

Number of Extentions Required

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
Due to numerous records	___	_____	___	_____	___	_____
Due to Consultations	___	_____	___	_____	___	_____
Due to both of the above	___	_____	___	_____	___	_____
Total extentions	___	100.0	___	100.0	___	100.0
Total extentions as percent of closed cases		_____%		_____%		_____%

SECTION 5

Length of Time to Completion

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
30 days or less	___	___	___	___	___	___
31 - 60 days	___	___	___	___	___	___
61 - 90 days	___	___	___	___	___	___
91 - 120 days	___	___	___	___	___	___
121 - 150 day	___	___	___	___	___	___
151 days or more	___	___	___	___	___	___
Total	___	100.0	___	100.0	___	100.0
X number of days to completion	___		___		___	

SECTION 6

Continuing Access Requests

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
No. of completed requests that were continuing access	___	100.0	N/A	N/A	___	100.0

SECTION 7

Disposition of Requests

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
All information disclosed	___	___	___	___	___	___
Disclosed in part - exempt	___	___	___	___	___	___
- non-existent	___	___	___	___	___	___
Nothing Disclosed - exempt	___	___	___	___	___	___
No Record Exists	___	___	___	___	___	___
Refused to confirm/deny - exempt	___	___	___	___	___	___
- non-existent	___	___	___	___	___	___
Withdrawn	___	___	___	___	___	___
Abandoned	___	___	___	___	___	___
Total	___	100.0	___	100.0	___	100.0

SECTION 8

Exemptions Invoked:

A) General Records

___ S.12(1)	___ S.14(1)(k)	___ S.17(1)(b)	___ S.21(5)
___ S.13(1)	___ S.14(1)(l)	___ S.17(1)(c)	___ S.22(a)
___ S.14(1)(a)	___ S.14(2)(a)	___ S.18(1)(a)	___ S.22(b)
___ S.14(1)(b)	___ S.14(2)(b)	___ S.18(1)(b)	___ S.49(a)
___ S.14(1)(c)	___ S.14(2)(c)	___ S.18(1)(c)	___ S.49(b)
___ S.14(1)(d)	___ S.14(2)(d)	___ S.18(1)(d)	___ S.49(c)
___ S.14(1)(e)	___ S.14(3)	___ S.18(1)(e)	___ S.49(d)
___ S.14(1)(f)	___ S.15(1)(a)	___ S.18(1)(f)	___ S.49(e)
___ S.14(1)(g)	___ S.15(1)(b)	___ S.18(1)(g)	___ S.49(f)
___ S.14(1)(h)	___ S.15(1)(c)	___ S.19	___ S.67(2)
___ S.14(1)(i)	___ S.16	___ S.20	
___ S.14(1)(j)	___ S.17(1)(a)	___ S.21(1)	

$\bar{X}$ number of exemptions invoked per denial request _____

B) Personal Information

___ S.12(1)	___ S.14(1)(k)	___ S.17(1)(b)	___ S.20
___ S.13(1)	___ S.14(1)(l)	___ S.17(1)(c)	___ S.22(a)
___ S.14(1)(a)	___ S.14(2)(a)	___ S.18(1)(a)	___ S.22(b)
___ S.14(1)(b)	___ S.14(2)(b)	___ S.18(1)(b)	___ S.49(b)
___ S.14(1)(c)	___ S.14(2)(c)	___ S.18(1)(c)	___ S.49(c)
___ S.14(1)(d)	___ S.14(2)(d)	___ S.18(1)(d)	___ S.49(d)
___ S.14(1)(e)	___ S.14(3)	___ S.18(1)(e)	___ S.49(e)
___ S.14(1)(f)	___ S.15(1)(a)	___ S.18(1)(f)	___ S.49(f)
___ S.14(1)(g)	___ S.15(1)(b)	___ S.18(1)(g)	___ S.67(2)
___ S.14(1)(h)	___ S.15(1)(c)	___ S.18(2)(a)	
___ S.14(1)(i)	___ S.16	___ S.18(2)(b)	
___ S.14(1)(j)	___ S.17(1)(a)	___ S.19	

$\bar{X}$ number of exemptions invoked per denial request _____

C) Totals

___ S.12(1)	___ S.14(1)(k)	___ S.17(1)(b)	___ S.20
___ S.13(1)	___ S.14(1)(l)	___ S.17(1)(c)	___ S.21(1)
___ S.14(1)(a)	___ S.14(2)(a)	___ S.18(1)(a)	___ S.21(5)
___ S.14(1)(b)	___ S.14(2)(b)	___ S.18(1)(b)	___ S.22(a)
___ S.14(1)(c)	___ S.14(2)(c)	___ S.18(1)(c)	___ S.22(b)
___ S.14(1)(d)	___ S.14(2)(d)	___ S.18(1)(d)	___ S.49(a)
___ S.14(1)(e)	___ S.14(3)	___ S.18(1)(e)	___ S.49(b)
___ S.14(1)(f)	___ S.15(1)(a)	___ S.18(1)(f)	___ S.49(c)
___ S.14(1)(g)	___ S.15(1)(b)	___ S.18(1)(g)	___ S.49(d)
___ S.14(1)(h)	___ S.15(1)(c)	___ S.18(2)(a)	___ S.49(e)
___ S.14(1)(i)	___ S.16	___ S.18(2)(b)	___ S.49(f)
___ S.14(1)(j)	___ S.17(1)(a)	___ S.19	___ S.67(2)

$\bar{X}$ number of exemptions invoked per denial request _____

	GENERAL RECORDS	PERSONAL INFORMATION	TOTAL
$\bar{X}$ no. of exemptions/request involving denials	_____	_____	_____

SECTION 9

Notices to Affected Parties

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
Number of notices due to S.17(1)	—	—	—	—	—	—
Number of notices due to S.21(1)(f)	—	—	—	—	—	—
Total notices sent	—	100.0	—	100.0	—	100.0
Total requests involving notices	—		—		—	
X number of notices/request involving notices	—		—		—	

SECTION 10

Method of Access Requested

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
Copies requested	—	—	—	—	—	—
Examination of original requested	—	—	—	—	—	—
Copies and examination requested	—	—	—	—	—	—
No preference given	—	—	—	—	—	—
Total	—	100.0	—	100.0	—	100.0

Method of Access Granted

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
Copies granted	—	—	—	—	—	—
Examination of original granted	—	—	—	—	—	—
Copies and examination granted	—	—	—	—	—	—
Total	—	100.0	—	100.0	—	100.0

SECTION 11

Fees

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
Cases where fees estimated	___	___	___	___	___	___
Cases where fees collected	___	___	___	___	___	___
Cases where fees waived- in whole	___	___	___	___	___	___
- in part	___	___	___	___	___	___
Total fees estimated	$_____		$_____		$_____	
Total fees collected	$_____		$_____		$_____	
Total fees waived	$_____		$_____		$_____	
Avg. fee estimated/estimated case	$_____		$_____		$_____	
Avg. fee collected/collected case	$_____		$_____		$_____	
Avg. fee waived/waived case (whole or part)	$_____		$_____		$_____	

SECTION 12

Reasons for Collection of Fees

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
Search Time (in excess of 2 hours)	___	___	___	___	___	___
Reproduction	___	___	___	___	___	___
Preparation	___	___	___	___	___	___
Shipping	___	___	___	___	___	___
Computer Costs	___	___	___	___	___	___
Other (including other invoiced costs)	___	___	___	___	___	___
Total	___	100.0	___	100.0	___	100.0

SECTION 13

CORRECTION REQUESTS

	No.	%
Requests completed in 1988	___	_____
Requests carried over to 1989	___	_____
TOTAL requests received in 1988	___	100.0

_

X number of days to completion ___

SECTION 14

Dispositions (Completed Corrections Only)

	No.	%
Correction(s) made in whole	___	_____
Correction(s) made in part	___	_____
Correction(s) refused	___	_____
Correction(s) Withdrawn	___	_____
Total	___	100.0

Number of Statements of Disagreement Attached: _____

Notification of Correction or Statement of Disagreement requested: _____

Number of Notifications Sent: _____

Please describe how you determined what persons to send notifications to.

_____

_____

_____

SECTION 15

PERSONAL INFORMATION BANKS

Total Number of Personal Information
Banks Accessed (Closed P.I. Requests): _____

X number of Personal Information Banks
Accessed per closed P.I. Request: _____

Number of uses not described in directory: _____

Please provide a brief description of each instance where a use of personal information was not described in the directory and indicate if, and by what method, a link was attached. (Please use an additional page if required.)

_____

_____

_____

Have any additional personal information banks been identified and added to the directory? If yes, please describe.

_____

_____

_____

_____

SECTION 16

Form Notifications

Number of forms in use by institution: _____

Number of forms redeveloped to include notification regarding intended use of the information collected, authority for the collection, and individual to contact: _____

Number of forms under review regarding notification and other requirements: _____

SECTION 17

Other Situations Involving Privacy Matters

If any other situations arose involving privacy concerns, please describe them below or on an attached sheet if additional space is required.

_____

_____

_____

_____

_____

_____

APPEALS

SECTION 18

Number of Appeals Commenced in 1988

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
1. Refusal of access in whole	___	___	___	___	___	___
2. Refusal of access in part	___	___	___	___	___	
3. Refuse to confirm or deny	___	___	___	___	___	___
4 Correction(s) refused	___	___	___	___	___	___
5. Time extension	___	___	___	___	___	___
6. Third party information	___	___	___	___	___	___
7. Access method	___	___	___	___	___	___
8. Fees/Fee estimate	___	___	___	___	___	___
9. Record does not exist	___	___	___	___	___	___
10. Other	___	___	___	___	___	___
Total	___	100.0	___	100.0	___	100.

SECTION 19

Number of Appeals Completed in 1988

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
1. Refusal of access in whole	___	___	___	___	___	___
2. Refusal of access in part	___	___	___	___	___	
3. Refuse to confirm or deny	___	___	___	___	___	___
4 Correction(s) refused	___	___	___	___	___	___
5. Time extension	___	___	___	___	___	___
6. Third party information	___	___	___	___	___	___
7. Access method	___	___	___	___	___	___
8. Fees/Fee estimate	___	___	___	___	___	___
9. Record does not exist	___	___	___	___	___	___
10. Other	___	___	___	___	___	___
Total	___	100.0	___	100.0	___	100.

Total Number of completed Appeals as a percent of completed cases	___%	___%	___%

SECTION 20

Disposition of Completed Appeals

	GENERAL RECORDS		PERSONAL INFORMATION		TOTAL	
	No.	%	No.	%	No.	%
1. Non Jurisdictional	—	—	—	—	—	—
2. Settled at Mediation	—	—	—	—	—	—
3. Withdrawn at Mediation	—	—	—	—	—	—
4. Abandoned at Mediation	—	—	—	—	—	—
5. Dismissed at Inquiry	—	—	—	—	—	—
6. Allowed at Inquiry	—	—	—	—	—	—
7. Partially Allowed at Inquiry	—	—	—	—	—	—
8. Withdrawn at Inquiry	—	—	—	—	—	—
9. Settled at Inquiry	—	—	—	—	—	—
10. Other	—	—	—	—	—	—
Total	—	100.0	—	100.0	—	100.0

Appendix E

Summaries of Orders and Selected Summaries of Settled Cases

SUMMARIES OF APPEALS

Order No. 1
Appeal No. 880070
(May 9, 1988)

The appellant applied to the Ministry of Government Services requesting a copy of "The Metro Toronto Property Review", a study by Eli Comay of Comay Planning Consultants. Access was denied pursuant to subsection 22(b) of the *Freedom of Information and Protection of Privacy Act* on the basis that there were reasonable grounds to believe the report would be published and publicly available within ninety (90) days from the date of the request. The appellant appealed the denial of earlier access.

The Commissioner upheld the decision of the head. In coming to this conclusion, he noted the purpose of the *Act* in subsection 1(a) is "to provide a right of access to information under the control of institutions in accordance with the principles that information should be available to the public, that necessary exemptions from the rights of access should be limited and specific....". The Commissioner also noted that "...the burden of proof that the record or the part falls within one of the specified exemptions in this *Act* lies upon the head."(s. 53)

The appellant submitted in the grounds of appeal that early release of the report would benefit the public debate over the government's housing policy plans. The appellant cited section 23 of the *Act* which provides that exemptions under sections 13, 15, 17, 18, 20 and 21 do not apply where a "compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption." Subsection 22(b) is not one of the exemptions set out in section 23.

Submissions received from the head confirmed that "the information requested will be available" prior to the end of the ninety (90) day period provided for in subsection 22(b) of the *Act*. The submissions also indicated that it was the "intention to release the report to all interested parties on an equal basis, at cost."

The report was released by the Ministry on May 31, 1988, two days in advance of the expiry of the 90-day period.

Order No. 2
Appeal No. 880003
(June 9, 1988)

The appellant applied to Ontario Hydro requesting access to the Board of Directors' minutes for 1986 and 1987. The institution provided the appellant with a fee estimate of $120.00 for the requested records. The fees notification also explained that providing access to original records "was not reasonable in the circumstances, as the records required severing and original Board Minutes cannot leave Head Office". The appellant appealed the decision to charge a fee and the amount of the fee, as well as the decision not to make the record available for examination in Ottawa.

The appellant also applied for a waiver of fees based on subsection 57(3)(c) of the *Freedom of Information and Protection of Privacy Act*. The institution denied the appellant's request for a waiver of fees.

The Commissioner upheld the decision of the head not to allow the appellant to examine the record or parts thereof under subsection 30(2) of the *Act*. In coming to this conclusion, the Commissioner agreed with the head's submission that it was not "reasonably practicable" to permit the appellant to examine the record because it was subject to substantial amounts of severing, pursuant to subsection 10(2) of the *Act*.

Having found it not reasonably practicable in the circumstances of the case to provide an opportunity to examine the record, the Commissioner found it unnecessary to address the issue of where the record might be examined. However, he did not preclude the possibility that, in proper circumstances, arrangements could be made for transfer of a record to make examination by a requester more convenient.

The Commissioner upheld the decision of the head to follow subsection 5(1) of Ontario Regulation 532/87, as amended, to charge $.20 per page for photocopying of the record.

However, the Commissioner suggested that the fee of $.20 per page be viewed as a maximum and suggested that the institution make an effort to determine the actual cost of photocopying. He stated the importance of an institution making every effort to prevent fees from being used as a deterrent or impediment to the use of the *Act*.

The appellant claimed that fees should be waived pursuant to subsection 57(3)(c) of the *Act*. While the Commissioner acknowledged that no definition of the term "benefit public health or safety" exists in the *Act*, he asserted that it does not mean that fees will be waived where a record simply contains some information relating to health or safety matters.

While it had no bearing on the determination in this case, the appellant requested that the Commissioner consider the issue of a threshold or minimum fee. Ontario Regulation 532/87, recently amended, allows a head to waive any fee where the amount of payment would be $5.00 or less.

The Commissioner stated that it is important that all institutions covered by the *Act* apply a consistent set of guidelines which reflect the institution's rationale for charging fees. The Commissioner believes this rationale to be the recovery of some of the costs of the administration of the *Act* and the assurance that people who use the *Act* assume their fair share of costs.

To this end, the institution should determine the point at which the administrative cost of collecting fees exceeds the amount of the fees claimed, and that figure should be used as a threshold or minimum fee for all institutions. While there has not yet been sufficient experience to make this determination, the Commissioner urged the government to undertake this effort. The Commissioner underscored the importance of establishing a fair and consistent fee policy while at the same time guarding against fees being used to deter users of the *Act*.

Order No. 3
Appeal No. 880031
(June 21, 1988)

The appellant applied to the Ministry of Education (the Institution) requesting access to "a study on the Sacred Heart Roman Catholic School in Sioux Lookout" prepared by consulting engineers Keewatin-Aski Limited for the Dryden District Roman Catholic Separate School Board (the School Board). Access was denied pursuant to subsections 17(1)(c) and 18(1)(d) of the *Freedom of Information and Protection of Privacy Act*. The appellant appealed the denial of access.

During the mediation/investigation stage of the appeal, a narrowing of the issues was achieved. The appellant indicated his interest was confined to information contained in the report about asbestos and fire safety problems present in the school. Consequently, the subject of this appeal was the portion of the report in which these issues were addressed.

As a preliminary matter, the Commissioner found that the report was in the custody or under the control of the Institution. In coming to this conclusion, he noted that the report was submitted by the School Board to the Institution in support of a request for an allocation under the Institution's Capital Grant Plan. In addition, the Institution submitted that "it is unlikely that a request for money for work to be done on a school would be considered without an engineer's report."

The Commissioner ordered the disclosure of the portion of the report addressing asbestos and fire safety, as he found that neither the Institution nor the School Board had discharged the onus of proving that this portion of the report fell within one of the specified exemptions of the *Act*.

Subsection 17(1)(c) Exemption

The Commissioner set out the threefold test which must be met in order for information to fall within the exemption.

1. In finding that the information contained in the report was technical in nature, the Commissioner was satisfied that the portion of the report at issue fit within one of the categories of information set out in subsection 17(1).

2. After examining the circumstances surrounding the creation and use of the report, the Commissioner found that the report was supplied to the Institution in confidence implicitly. The School Board submitted that it received the report at an *in camera* session. The School Board has not released the report to the public. The Institution submitted that since the report was kept in confidence by the School Board and sent as supporting information with respect to the grant program, the Institution felt that it should respect the School Board's wishes and hold the report in confidence.

3. The final question addressed was whether there would be any undue loss or gain suffered by disclosure of the portion of the report requested. The Commissioner came to the conclusion that disclosure could not reasonably be expected to result in undue loss or gain to any person, group, committee or financial institution or agency.

Subsection 18(1)(d) Exemption

The Commissioner found that there was insufficient evidence to conclude that disclosure of the portions of the report dealing with asbestos and fire safety could reasonably be expected to be injurious to the financial interest of the Government of Ontario and accordingly ordered the relevant portions of the report be released within 20 days of making the order.

Order No. 4
Appeal No. 880009
(July 18, 1988)

In accordance with subsection 25(1) of the *Freedom of Information and Protection of Privacy Act, 1987*, a portion of a request made to Management Board of Cabinet was transferred to the Ministry of Education. The request was for correspondence from June 1983 to June 1985 with other Ministries, organizations, associations and religious leaders relating to the decision to extend government funding to separate schools. The appellant was provided with a fee estimate of $1,682.00 consisting of $1,152.00 search time, $480.00 preparation time, $40.00 reproduction costs, and $10.00 shipping costs. The requester was asked to make a deposit of $841.00. The appellant appealed the decision to charge a fee.

The Commissioner found that the language of subsection 57(1) of the *Act*, couched permissively as it is, provides the head with discretion not to charge a fee, without taking into account subsection 57(3). The Commissioner stated that a head must make an initial decision to charge a fee or not charge a fee based on all relevant factors in a particular case, which are not confined to the reasons set out in subsection 57(3) dealing with waiver. The Commissioner suggested that these factors might include such considerations as a pressing need to disseminate a particular piece of information; the administrative cost of collecting the fee compared with the total fee to be collected; the utility of making a particular type of information available given the nature of an individual institution; or the need to facilitate use by those living outside the municipality where the records are located.

Because the head in this case had argued throughout that he did not have the discretion under subsection 57(1) to not charge a fee, the Commissioner ordered that the request be sent back to the head for a decision based upon the exercise of this discretion within 20 days of the date of this Order.

A number of other issues were raised in this appeal. If, upon reconsideration, the head exercised his discretion not to charge a fee, that would dispose of the appeal. However, if the head exercised his discretion in favour of charging a fee, it was necessary to address the other issues.

The Commissioner found it is the responsibility of the requester to raise the question of fee waiver under subsection 57(3). However, he stated that the *Act* does not require this request to be explicit or in writing. It is satisfactory for a requester to invoke the provisions of subsection 57(3) by any conduct which could reasonably be expected to make the institution aware that the fee estimate is being questioned. The Commissioner stated that if the issue of fee waiver is not raised by the appellant, a head does not have a duty to consider waiver. However, this does not preclude a head from considering waiver even in the absence of a request for waiver.

The Commissioner found that the wording of subsection 57(3) creates an exhaustive list of the matters to be considered by the head in determining if a waiver of all or <u>any part</u> of a fee is appropriate.

The Commissioner summarized the relationship between subsections 57(1) and 57(3) of the *Act*. Subsection 57(1) gives the head a general discretion to charge or not charge a fee based on all the relevant factors in a given request. If this discretion is exercised in favour of charging a fee and a requester, in some manner requests a waiver, the head must then consider whether or not any of the enumerated categories of subsection 57(3) apply. The discretion under subsection 57(1) alerts the head that, while he may decide to do so, he is under no obligation to charge a fee in each case. The discretion under subsection 57(3) on the other hand, speaks to more specific categories where a fee may be waived when the head has otherwise determined that a fee should be charged.

In this appeal, the Commissioner did not accept the argument of financial hardship put forward by the appellant and found that the grounds for waiver under subsection 57(3) did not apply.

The appellant also submitted an argument for waiver of fees based upon the special role of the media in educating and informing the public. While the Commissioner had sympathy for this argument, he reiterated that the considerations for waiver listed in subsection 57(3) are exhaustive and do not include any specific recognition of a special status for the media. The Commissioner noted that this is not the case in the United States, where the *Freedom of Information Reform Act, 1986* recognized a special role of the news media by treating them as a special class of requester.

The appellant raised a further argument to the effect that charging of fees infringes upon freedom of the press. The Commissioner found that the concept of a fee which is reasonably calculated and rationally connected to the requested service is a wrong of constitutional dimensions was extravagant.

The Commissioner found that the fee estimate was properly calculated in

accordance with the provisions of subsection 57(1) of the *Act*, except for the calculation of preparation time. In calculating preparation time under subsection 57(1)(b), the institution did not make a distinction between the time involved in actually making severances within the records, and time spent reviewing records to decide whether or not an exemption applied. The Commissioner found that the fee estimate for preparation which included costs associated with both decision-making and severing was an improper interpretation of subsection 57(1)(b). The Commissioner determined that the time spent making a decision as to the application of an exemption must not be included when calculating fees related to preparation of a record for disclosure nor is it proper to include time spent for such activities as packaging records for shipment, transporting records to the mailroom or arranging for courier service. The Commissioner therefore ordered that the estimate for preparation time in this case be recalculated in accordance with the provisions of subsection 57(1)(b).

Order No. 5
Appeal No. 880091
(July 18, 1988)

A portion of a request made to the Office of the Premier under the *Freedom of Information and Protection of Privacy Act, 1987* was transferred to the Archives of Ontario. The request was for correspondence from June 1983 to June 1985 between the Premier and the Ministries, the general public and religious leaders relating to the decision to extend government funding to separate schools. The institution provided the appellant with a fee estimate of $5,100.00 for the records requested, consisting of $36.00 search time, $4,320.00 preparation time, $720.00 reproduction costs, and $60.00 shipping costs. (The error in calculation was remedied at the inquiry.) The requester was asked to make a deposit of $2,550.00.

Please refer to the summary of the Order in Appeal No. 880009 as the issues addressed in that appeal are identical to those raised in this appeal. As in Appeal No. 880009, the Commissioner ordered that this request be returned to the head for reconsideration and the appropriate exercise of discretion within 20 days of the date of the order. Determinations were made on subsequent issues which would become relevant should the head exercise his discretion in favour of charging a fee.

The only divergence the Commissioner made from the resolution of issues in Appeal No. 880009 was in his discussion of whether the amount of the estimated fee was properly calculated. The Commissioner commended the institution for the thorough manner in which the fee estimate was prepared.

The Commissioner noted that the major component of the estimated fee represented costs of preparing the record for disclosure under subsection 57(1)(b) of the *Act*. The Commissioner determined that the fee estimate properly included costs associated with the time involved in actually making severances within the records but not time spent reviewing records to decide whether or not an exemption applied.

Order No. 6
Appeal No. 880005
(July 18, 1988)

The appellant applied to the Ministry of Revenue requesting, among other records, "any reports evaluating/assessing the operation of the *Land Speculations Tax Act*." The appellant asked to examine the records in Ottawa and to have the fees waived. The request was subsequently transferred to the Ministry of Treasury and Economics. The Ministry informed the appellant that arrangements had been made for viewing the documents requested in the Ministry Reading Room located in Toronto. A fee estimate of $48.30 was forwarded, consisting of $32.80 for photocopying charges, $12.00 for preparation costs and $3.50 for shipping.

The Commissioner ordered that the head make the records available for viewing in Ottawa within 20 days of the date of the order. In coming to this decision, he referred to subsection 30(2) of the *Act* which outlines the method of access to records. While the Commissioner acknowledged that this subsection does not specifically require an institution to provide requesters with an opportunity to view the record at the location of their choice, he stated that an assessment must be made as to whether or not the requester's preferred location is acceptable based on whether or not it is "reasonably practicable". The Commissioner stated that in keeping with the overall principles of the *Act* it is the responsibility of a head to demonstrate that the means of viewing suggested by a requester is not reasonably practicable.

In weighing the concerns put forth by the head in this case, the Commissioner concluded that the head had not established that it would not be

reasonably practicable to allow the appellant to view the records in question in Ottawa.

With respect to the fees appeal, the Commissioner found that the shipping charges claimed by the head in this case fall within the scope of subsection 57(1)(d) and were allowable. In addition, if, after viewing the record in Ottawa, the appellant requested photocopies of the record, these costs would be allowed under subsection 57(1)(c), subject to consideration of the fee waiver provisions of subsection 57(3). Similarly, the cost of preparing the record, estimated in accordance with subsection 5(2) of Ontario Regulation 532/87 is allowable under subsection 57(1)(c).

The Commissioner found that subsection 57(1) of the *Act* provides the head with discretion as to whether or not a fee is charged in an individual case. The Commissioner found no error in the exercise of the head's discretion in favour of charging a fee in this case.

Subsection 57(3) provides the head with a discretion to waive fees when it is fair and equitable to do so. In this case, the head indicated that subsection 57(3) was reviewed in detail and that no circumstances existed under which he should exercise his discretion to waive all or any part of the amount required to be paid under the *Act*.

The appellant submitted that "the records sought are in the public interest; the data would hopefully receive public dissemination; and the records in part are tools, or should be viewed first..." The appellant further submitted that the threshold level of $5.00 established by the regulation was far too low and urged the Commissioner to come to a more sensible and "true cost" threshold.

The Commissioner found that there were insufficient grounds for a waiver of fees under subsection 57(3) therefore the decision of the head to charge the fee was upheld.

The issue of a threshold or minimum fee was dealt with by the Commissioner in a previous Order (Appeal No. 880003 - see Newsletter Vol.1 Issue 1).

The Commissioner concluded by stating that one of the fundamental purposes of the *Act* is to facilitate access to government information promptly and at the lowest cost to the public. While the Commissioner recognized the Legislature's intention to include a "user pay" principle evidenced by section 57 of the *Act*, he asserted that the government must apply this section in a way that is both reasonable and rational.

Order No. 7
Appeal No. 880011
(July 18, 1988)

The appellant applied to the Ministry of Treasury and Economics requesting access to: "reports, assessments of Stelco-Red Lake Mine tax break - briefings on this and public, political reaction to the Minister (1985-1987);... the 1986 and 1987 Catalogue of statistical files;... any assessment/reports prepared reacting to or reviewing the last three Provincial Auditor Reports after each release;... and a report in 1986/1987 by Coopers and Lybrand on the Exploracom Computer Project." The appellant asked to examine the records in Ottawa and to have the fees waived.

The Ministry advised the appellant that his request for reports and assessments of the Stelco-Red Lake Mine tax break, as well as briefings on the tax break had been located and that if he would like copies of the documents sent to him by mail, the estimated fee for the record was $57.30. This fee consisted of $12.00 for search time, $30.00 for photocopying, $12.00 for preparation, and $3.30 for shipping. The Ministry informed the appellant that his request for the Catalogue of statistical files for the years 1986 and 1987 could not be filled because the last issue was published in 1981. A fee of $47.00 was quoted for photocopying and shipping of the 1981 issue. The assessment/reports prepared reacting to or reviewing the Provincial Auditor's Annual Reports were located. The Ministry quoted an estimated fee of $23.50, consisting of $10.00 for photocopying charges, $12.00 for preparation and $1.50 for shipping. The appellant's request for a copy of the 1986-1987 Exploracom report was transferred to the Ministry of Industry, Trade and Technology.

In his letter to the Commissioner appealing the decision to charge a fee and the amount of the fee, as well as the decision not to make the record available for examination in Ottawa, the appellant indicated that all of the points raised in Appeal No. 880005 would apply to this appeal. In fact, the representations received by both parties in respect of this appeal were identical to those received in respect of Appeal No. 880005.

For reasons given in Appeal No. 880005, the Commissioner ordered the institution to produce the records for viewing by the appellant in Ottawa within 20 days of the date of this Order. The Commissioner upheld the head's refusal to waive the fees and his decision to charge fees.

Order No. 8
Appeal No. 880014
(July 18, 1988)

The appellant applied to the Ministry of Revenue requesting access to "records prepared in response to the last three Provincial Auditors Reports before or after release of these reports, as they relate to your agency." The appellant asked to examine the records in Ottawa and to have the fees waived. The Ministry informed the appellant that it would not send the original documents to Ottawa. Copies would be provided, however the head determined that there was no reason to waive the costs of photocopying. A fee estimate of $18.97 was forwarded, consisting of $13.80 for photocopying charges and $5.17 for shipping.

The Commissioner ordered that the head make the records available for viewing in Ottawa within 20 days of the date of the order. The issues addressed in Appeal No. 880005 are identical to those raised in this appeal.

Order No 9
Appeal No. 880016
(July 28, 1988)

The appellant applied to the Ministry of Health requesting access to: "the names and locations of doctors who have extra-billed after Bill 94 came into force; any reports reviewing such extra-billing or reporting on complaints received; ...medical areas... [or] OHIP fee areas that doctors have been practicing extra-billing; ...[and] the techniques used to claim for extra-billing." The Ministry determined that no reports existed which reviewed extra-billing or reported on complaints received. The Ministry provided access to a number of records, for example, the geographical location of the doctors who extra-billed, their specialties, the type of additional charges, etc. The physicians' names, OHIP registration numbers and the dates on which they opted in or out of OHIP were severed from the records released to the appellant. The appellant appealed the decision of the Ministry to sever this information from the records.

The Commissioner upheld the decision of the Ministry to withhold the severed information from disclosure. However, this decision was based, not on a balancing of competing privacy and access interests, but on a "mechanical" application of the law. In this appeal, the institution relied upon section 44 of the *Health Insurance Act*, R.S.O. 1980, c.197 and section 7 of the *Health Care Accessibility Act*, S.O. 1986, c.20 as "confidentiality provisions" which forbid the disclosure of the information requested by the appellant.

The Commissioner addressed the issue of whether the legislative provisions relied on by the institution are "confidentiality provisions" barring the application of the *Freedom of Information and Protection of Privacy Act, 1987*. Subsection 67(2) provides that the *Act* overrides "confidentiality provisions" in other legislation, unless the other legislation specifically provides otherwise. However, because subsection 67(3) of the *Act* delays the application of subsection 67(2) until January 1, 1990, a head may be bound not to disclose information pursuant to a "confidentiality provision" contained in another piece of legislation until that date.

The Commissioner was satisfied that the two provisions (s.44 and s.7) qualified as "confidentiality provisions" as the term is used in section 67 of the *Act*. Accordingly, the Commissioner held that these provisions do operate to forbid the head to disclose "all matters that come to his attention in the course of his employment or duties" with certain exceptions for particular types of information.

The second issue the Commissioner addressed was whether the severed information fell within the scope of the "confidentiality provisions". The Commissioner noted that both the *Health Insurance Act* and the *Health Care Accessibility Act* contained exceptions to the requirement that "all matters" coming to the attention of certain individuals in certain circumstances shall not be communicated. The Commissioner held that the names of doctors who provided health care services must be considered information included in the phrase "all matters" and accordingly, fall under the general prohibition against disclosure contained in the *Health Insurance Act*. Although the appellant did not request the OHIP billing numbers and dates when doctors opted in or out of the plan, the Commissioner did determine that this information comes within "all matters... pertaining to... insured services rendered and the payments made therefore".

In concluding, the Commissioner made certain statements with respect to the scope of his authority to review "confidentiality provisions" and to view records allegedly covered by such provisions. The Commissioner stated that while the head of an institution must determine at first instance whether a particular statutory provision is a "confidentiality provision" precluding access to the requester, the Commissioner, as well, must be assured of the relevance and the application of the provision upon receipt of an appeal. The Commissioner regards this duty as fundamental to the effective operation of the *Act*.

The Commissioner did not accept that a "confidentiality provision" applied to preclude the application of the *Act* without also ensuring that the provision in question relates to the specific record sought by the requester. The Commissioner stated that mere reliance on the assertions of the institution, without the right to inspect the record by the Commissioner, cannot possibly inspire confidence on the part of the public that the principles enshrined in the *Act* have been protected. The Commissioner quoted subsection 52(4) of the *Act* which sets out the powers of the Commissioner as supporting this approach.

Accordingly, the Commissioner stated that it is his intention to fully review the application and scope of any legislative "confidentiality provisions" which are invoked by institutions in denying access to records requested by an appellant. In so doing, the Commissioner stated he will determine on a case-by-case basis the extent to which he must examine those records to ensure that they are covered by the provisions relied upon.

The Commissioner found that in the circumstances of this appeal, section 44 of the *Health Insurance Act* and section 7 of the *Health Care Accessibility Act* operated as "confidentiality provisions" barring the application of the *Act* in respect of the information that was severed by the institution.

Order No. 10
Appeal No. 880042
(July 28, 1988)

The appellant applied to the Ministry of the Solicitor General requesting access to all personal information about himself in the control of the Ministry and "2346 pages of O.P.P. reports on alleged corruption in the York Sheriff's Department". The Ministry provided the appellant with a fee estimate of $147.20, consisting of $51.20 for photocopying and $96.00 for preparation time. The appellant appealed the decision to charge a fee and the amount of the fee.

The Commissioner dismissed the appeal. In reaching this conclusion, the Commissioner first addressed whether the amount of the estimated fee was properly calculated in accordance with subsection 57(1) of the *Act*. The Ministry submitted that although the relevant record was reduced to 320 pages, because of references to several individuals "considerable severing of personal information is required". Furthermore, the estimated photocopying charges were based on a rate of 20 cents per page for the 256 pages which did not contain personal information or information that should be withheld pursuant to the *Act*. The Commissioner found that the photocopying charges were consistent with the fee charges outlined in Ontario Regulation 532/87 and that the activity included within the scope of preparation time under subsection 57(1)(b) was proper and not excessive.

The second issue addressed by the Commissioner was whether the head's decision not to waive the fee under subsection 57(3) of the *Act* was in accordance with the terms of the *Act*. In addressing this issue, the Commissioner made reference to the interpretation of the wording of this subsection in a previous Order (see Order in Appeal No. 880091). In that Order, the Commissioner found that if a head properly decides that a fee should be charged under subsection 57(1), he must then consider whether or not any of the enumerated matters in subsection 57(3) apply. The Commissioner further stated that it is the responsibility of the requester to provide adequate evidence to support a claim for fee waiver. In this case, the appellant claimed financial hardship under subsection 57(3)(b), but offered no evidence to support this claim. As such, the Commissioner upheld the institution's position that the grounds for waiver under subsection 57(3) did not apply.

Order No. 11
Appeal No. 880022
(August 3, 1988)

The appellant applied to the Ministry of Skills Development requesting access to Job Competition File SD 4096 including applications and resumes of interviewed candidates, criteria and rating sheets, interview schedules and correspondence, and the qualifications of the successful candidate. The Ministry granted partial access to this file. Access to applications and resumes of all candidates was denied pursuant to subsections 21(1)(f) and 21(3)(d) of the *Freedom of Information and Protection of Privacy Act, 1987*. The appellant appealed the denial of access to the applications and resumes of other candidates.

The Commissioner upheld the head's decision to deny access to the records at issue. In making this determination, the Commissioner addressed three

issues. First, whether information contained in the records was personal information pursuant to sections 2 and 21 of the *Act*.

In its letter responding to the appellant's access request, the institution relied upon subsection 21(1)(f) in refusing disclosure of the records. The Commissioner stated that reliance on this subsection to prevent disclosure may be somewhat confusing to requesters as the wording of the subsection reads as an exception to non-disclosure.

The exemption itself is set out in subsection 21(1) of the *Act*. In deciding whether the information contained in the records constituted "personal information" as defined in the *Act*, the Commissioner made reference to subsection 2(1) of the *Act* and concluded that this definition was not exhaustive. On reviewing the records, the Commissioner found that the names, addresses, employment history, educational history, etc. contained therein was personal information. As such, The Commissioner found that pursuant to the mandatory subsection 21(1) exemption of the *Act*, the head of the Institution was compelled to refuse disclosure unless one of the statutory exceptions to that general rule applied.

The Commissioner determined whether disclosure of the records to any person other than the individuals to whom the information related could be presumed to be an unjustified invasion of personal privacy. The clauses listed under subsection 21(3) of the *Act* describe a number of situations in which disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy. The Commissioner agreed with the Ministry that the refusal to disclose the records at issue was justified under subsection 21(3)(d) which states that disclosure of information that "relates to employment or educational history" is presumed to constitute an unjustified invasion of personal privacy.

Following this determination, the Commissioner canvassed the *Act* to determine whether any provisions applied to rebut the presumption. Subsection 21(4) of the *Act* provides limitations on the presumption set out in subsection 21(3) of the *Act*. The Commissioner determined that the information contained in the records in issue did not fall within the circumstances set out by this subsection. The Commissioner also stated that subsection 21(2) of the *Act* provides some criteria which, if relevant, may be considered in determining whether the presumed invasion under subsection 21(3) is rebutted. However, after reviewing the criteria set out in this subsection, the Commissioner found that none of the factors mentioned therein outweighed the presumption of unjustified invasion of personal privacy in this case.

Order No. 12
Appeal No. 880024
(August 3, 1988)

The appellant applied to the Ministry of Community and Social Services, as agent for a landlord, requesting access to the current address of one of the landlord's former tenants. The Ministry refused to confirm or deny the existence of a record containing the requested information pursuant to subsection 21(5) of the *Act*. The appellant appealed the decision of the Ministry.

In upholding the head's decision to refuse to confirm or deny the existence of a record, the Commissioner addressed two issues. First, the Commissioner determined whether the disclosure of the requested information, if it existed in the custody of the institution, would constitute an unjustified invasion of personal privacy for the purposes of section 21 of the *Act*. Both parties agreed that the requested information would fall within the definition of personal information under subsection 2(1) of the *Act*. The Ministry submitted that the names and addresses of individuals, which are collected by it as part of the administration of social assistance benefits, fall within subsection 21(3)(c) of the *Act*, disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Furthermore, the Ministry submitted that if the presumption under subsection 21(3)(c) is found not to exist, some of the criteria referred to in subsection 21(2) apply and supports the position that disclosure would constitute an unjustified invasion of personal privacy.

The Commissioner found that the requirements for a presumed invasion of personal privacy under subsection 21(3)(c) did not exist. The information in question, without more, does not relate to eligibility for social services or welfare benefits or the determination of benefit levels, and as such, does not meet the test of subsection 21(3)(c). However, the Commissioner did find that the release of the information in question, if it does exist, would result in an unjustified invasion of privacy. The Commissioner accepted the Ministry's arguments that the information in question falls under subsection 21(2)(h), in that it contains personal information that, if present within the Ministry, would have been supplied in confidence. The Commissioner also accepted the Ministry's argument that the former tenant's address, if it exists in the institution,

qualifies as "highly sensitive" personal information under subsection 21(2)(f).

The Commissioner agreed with the Ministry's position that section 23 bolsters the privacy protection portion of the *Act* in this instance. That section provides that an exemption from disclosure of a record under section 21 does not apply where a "compelling public interest" in the disclosure of the record outweighs the purpose of the exemption. The Commissioner also noted that section 23 does not refer to a "private" interest such as that of the appellant's client. The Commissioner stated that the appellant's interest failed on both counts; it is neither compelling nor a public interest.

The second issue addressed by the Commissioner was whether the head had properly exercised his discretion under subsection 21(5) of the *Act* to refuse to confirm or deny the existence of the record. The Commissioner stated that on a plain reading of the subsection, the head has discretion to refuse to confirm or deny the existence of a record if it has been established that disclosure of the record would constitute an unjustified invasion of personal privacy. As long as this discretion has been exercised reasonably, it should not be disturbed on appeal. In this case, the Commissioner found that there was no evidence of unreasonableness on the part of the head in the exercise of his discretion.

Order No. 13
Public Service Superannuation Fund (31 Appeals covered by same order)
(August 17, 1988)

The appellants applied to the Ministry of Correctional Services requesting access to a portfolio showing what investments had been made with contributions to the Public Service Superannuation Fund. The Freedom of Information Co-ordinator advised the appellants that neither the Ministry of Correctional Services nor the Ministry of Government Services had such a record. However, the Co-ordinator contacted the Ministry of Treasury and Economics and obtained whatever information did exist about the Fund. This information was forwarded to the appellants. The appellants requested a review on the basis that this information was insufficient.

As a preliminary matter, the Commissioner concluded that the nature of the information sought in the request was clear and that it was not necessary to reformulate the request pursuant to subsection 24(2) of the *Act* in order to identify the record, if it existed.

The main issue addressed by the Commissioner was whether all reasonable steps were taken to locate a record which might provide the information requested. The Commissioner acknowledged that the Co-ordinator did more than was required of her in her attempts to satisfy the requests for information. Before she could transfer the request to another institution under the *Act*, she was required under section 25 to determine which institution, if any, would have custody or control of such a record. After being unable to identify such an institution, the Co-ordinator tried to obtain some information about the Fund.

The Commissioner stated that the Co-ordinator was not obliged to "create" a record to answer the appellants' request under the *Act*, but she did so anyway, with the assistance of the Ministry of Treasury and Economics.

The Commissioner stated that following his investigation and inquiry, he was satisfied that there was no record in existence which specifically answered the questions asked by the appellants. Furthermore, although the appellants were not satisfied with the answers contained in the record created by the Co-ordinator, the Commissioner asserted that, in his view, the record did answer the questions asked. The Commissioner also stated that he had no mandate under the *Act* to comment upon how pension funds are invested.

The Commissioner found that the Co-ordinator took all reasonable steps to locate a record which might provide the information requested, and as such, the Ministry complied with the requirements of the *Act*.

Order No. 14
Appeal No. 880002
(August 25, 1988)

The appellant applied to the Ministry of Community and Social Services requesting access to her personal file, specifically that portion relating to the estate of her late brother and the identity of the party who supplied this information to the institution. The Ministry denied access to the file in accordance with subsections 14(1)(d), 21(2)(h) and 21(3)(b) of the *Act*. Later, the Ministry added subsections 49(a) and (b) as a basis for denial.

The Ministry submitted that it received information from a third party with respect to the appellant's claim for family benefits. On confirming this information, the Ministry terminated the Appellant's benefits.

The Ministry agreed to partial disclosure of the information contained in the file requested by the appellant. Given the nature of the appeal, it was not possible for the Commissioner to identify the particulars of the items withheld.

The Commissioner upheld the decision of the head to refuse to disclose the records in issue. In reaching this conclusion, the Commissioner addressed two issues.

The first issue was whether disclosure of the records in question would constitute an unjustified invasion of another person's personal privacy, and thereby fall within the exemption under subsection 49(b) of the *Act*. The Commissioner found that the information contained in the records fell within the definition of "personal information" set out in subsection 2(1) of the *Act*.

The Commissioner stated that in determining whether or not disclosure of this information would constitute an unjustified invasion of another individual's personal privacy, a head must consider all relevant circumstances and need not be restricted to the specific criteria listed in the *Act*. After considering the nature of the personal information and the manner in which the information was received by the Ministry, the Commissioner found that disclosure of the records in question would constitute an unjustified invasion of the personal privacy of the third party.

The second issue addressed by the Commissioner was whether the records in issue might reasonably be severed pursuant to subsection 10(2) of the *Act*. After reviewing the records in issue, the Commissioner saw no reasonable way to make any severances which would effectively prevent the disclosure of information which should be exempted.

Order No. 15
Appeal No. 880010
(September 8, 1988)

The appellant applied to the Ministry of Consumer and Commercial Relations for access to any 1986 - 87 investigation reports related to funeral firms. The Ministry responded that such reports would be records as described in subsection 14(2)(a) of the *Act* and under subsection 14(3), the existence of such records would neither be confirmed nor denied. The application of subsection 14(1) of the *Business Practices Act*, R.S.O. 1980, c.55 as a "confidentiality provision" was raised, for the first time, in the written submissions received from the Ministry.

The Commissioner found that, in the circumstances of this appeal, subsection 14(1) of the *Business Practices Act* operated as a "confidentiality provision" barring the application of the *Freedom of Information and Protection of Privacy Act, 1987* in respect to the information requested. The Commissioner also found that the information requested, if it existed, would fall within the scope of this "confidentiality provision", and therefore he could not interfere with the head's decision. In coming to this determination, the Commissioner canvassed three issues.

As a preliminary matter, the Commissioner addressed whether the Ministry could raise a new reason for not disclosing a record after an appeal had been filed. The Commissioner stated that the introduction of new or different grounds for refusing access to records at the appeal stage should be the exception rather than the rule. In this case, the appellant was advised of the new issue raised by the Ministry, given an opportunity to respond, and did so.

The second issue addressed by the Commissioner was whether subsection 14(1) of the *Business Practices Act* is a "confidentiality provision" which bars the application of the *Freedom of Information and Protection of Privacy Act, 1987*. In addressing this issue, the Commissioner relied on the reasoning set out in Appeal No. 880016. The Commissioner stated that it was his responsibility to scrutinize the legislative provision in question where an institution purports to remove itself from the ambit of the *Act* through the use of a "confidentiality provision" in another act. In these circumstances, the Commissioner does not engage in a balancing of the interests of access and privacy.

The Commissioner stated that section 67 of the *Act* does not contain an exemption to the *Act*'s disclosure obligations. The Commissioner stated that rather, subsection 67(2) provides that the *Act* overrides "confidentiality provisions" in other legislation, unless the other legislation specifically provides otherwise. However, the Commissioner acknowledged that as subsection 67(3) delays the application of subsection 67(2) until January 1, 1990, a head may be bound not to disclose information pursuant to a "confidentiality provision" contained in another piece of legislation until January 1, 1990.

After canvassing section 14 of the *Business Practices Act*, the Commissioner determined that this provision constitutes a "confidentiality provision" as the term is used in section 67 of the *Freedom of Information and Protection of Privacy Act, 1987.*

The last issue addressed by the Commissioner was whether the records, if they existed, would fall within the scope of the "confidentiality provision". In answering this question, the Commissioner determined that the requested information must be considered information included in the phrase "all matters" appearing in the provision and, therefore, fell under the general prohibition from disclosure in section 14 of the *Business Practices Act.*

Order No. 16
Appeal Nos. 880025, 880041, 880060, 880061, 880062, 880063, 880064, 880065, 880080, 880081
(September 8, 1988)

The appellant applied to the Ministry of Agriculture and Food requesting access to all 1987 meat inspection reports for meat packing plants located in eastern Ontario. The Ministry notified the appellant that the operators of the meat packing plants involved would be given the opportunity to make representations as to why the reports should not be released. The Ministry received representations from six of approximately thirty-five plant operators.

After considering these representations, the Ministry severed from the report the names, locations and plant numbers in accordance with subsection 17 (1)(a) of the *Act*. A fee for the preparation of the records was estimated at $18, consisting of 45 minutes at $6 for each 15 minute period.

Eight of the plant operators (hereinafter referred to as the "third party appellants") appealed the decision of the head to grant partial access.

The appellant appealed the Ministry's decision to sever the identifying information from the reports; requested immediate access to the reports of those affected parties who did not appeal the Ministry's decision to grant partial access; requested the identity and written representations received by the Ministry from the third party appellants which had been refused pursuant to section 21 of the Act; and appealed the Ministry's decision to charge a fee of $18 and not grant a fee waiver. (The latter is the sole issue in Appeal No. 880081.)

The Commissioner's office sent notice to the appellant, the Ministry, the third party appellants and the affected parties who had not appealed, that an inquiry into these matters would be undertaken. Representations were received from the appellant, the Ministry, three third party appellants, eight affected parties and a meat packers trade association on behalf of its members.

The Commissioner ordered the Ministry to produce all the 1987 meat inspection reports for eastern Ontario, without severances, for viewing by the appellant in Ottawa. In coming to this determination, the Commissioner canvassed six issues.

First, the Commissioner addressed the issue of whether any parts of the 1987 reports fell within the section 17 exemption. The Commissioner stated that in order to fall within section 17 of the *Act*, the reports must meet a three-part test:

- They must contain third party information that is a trade secret, or scientific, technical, commercial, financial or labour relations information; and

- The information in the reports must have been supplied by the third party to the Ministry in confidence, implicitly or explicitly; and

- The prospect of disclosure of the reports must give rise to a reasonable expectation that one of the types of injuries specified in (a), (b) or (c) of subsection 17 (1) will occur.

The Commissioner determined that the Ministry's proposed severances of name, location and plant number would not reveal any of the types of information enumerated in subsection 17(1) if disclosed, and therefore did not meet the first part of the test. As a result, the Commissioner did not uphold the Ministry's decision. The third party appellants argued that access to the entire reports should be refused under section 17. In response to this argument the Commissioner determined that the information contained elsewhere in the records was not any of the types of information listed in subsection 17(1) of the *Act*.

While not necessary for the disposition of this appeal, the Commissioner dealt briefly with the remaining two parts of the test. The Commissioner stated that the information in the inspection reports was not supplied by the third parties to the Ministry as required by the *Act*. Rather, the Ministry obtained the information itself through inspections required by statute.

Finally, with respect to the third part of the test, the Commissioner stated

that neither the Ministry nor any of the third party appellants provided any evidence to support an allegation of possible harm.

The second issue addressed by the Commissioner was whether the appellant was entitled to know the identity of the third party appellants and be provided with their representations. The Commissioner stated that the release of the names of third party appellants is something that should be decided on a case-by-case basis. Generally, releasing these names would not create a problem. However, as in this case, if by releasing the names, the very information at issue in the appeal is released, the names cannot be released.

The third issue addressed by the Commissioner was whether any part of the reports qualified as "personal information" and, if so, whether the disclosure of the information would constitute an unjustified invasion of personal privacy pursuant to section 21 of the *Act*.

The Commissioner determined that the use of the term "individual" in subsection 2 (1) of the *Act* makes it clear that the protection provided with respect to the privacy of personal information relates to natural persons. As such, the information in question did not qualify as information about an identifiable individual. The Commissioner concluded, therefore, that disclosure of the reports would not constitute an unjustified invasion of personal privacy pursuant to section 21 of the *Act*.

The fourth issue addressed by the Commissioner was whether the Ministry was correct in refusing to provide the appellant with immediate access to the severed reports of the affected parties who did not appeal the Ministry's decision. The Commissioner set out the Ministry's statutory obligations with respect to affected parties which are found in section 28 of the *Act*. The Commissioner concluded that because only eight parties appealed the Ministry's decision, the Ministry was obliged to release the severed records of those affected parties who did not appeal after the time for appeal by the affected parties had expired.

The fifth issue addressed by the Commissioner was whether the amount of the fee estimate was in accordance with the terms of the *Act*. Since the Commissioner ordered the release of reports without severances no preparation costs would be incurred.

The final issue addressed by the Commissioner was whether the Ministry's decision not to waive fees was in accordance with the terms of the *Act*. As a result of the Commissioner's decision that it was no longer necessary for the Ministry to incur the $18 preparation cost, this ground of appeal had been otherwise resolved.

Order No. 17
Appeal No. 880078
(October 6, 1988)

The appellant applied to the Ministry of the Solicitor General requesting access to all "verbal or written" information relating to two job competitions and all "verbal or written" information relating to the early termination of her employment contract. The Ministry granted the appellant access to her own personnel and job competition files. Information about other candidates in the job competition files was severed from the records pursuant to section 21 of the *Freedom of Information and Protection of Privacy Act, 1987*.

The appellant claimed that four classes of records were being withheld. These items were: a test score; a list of persons contacted for references; notes of comments or recommendations from two superiors regarding one of the job competitions; and notes of comments or recommendations from two superiors regarding the termination of her employment contract.

The Commissioner first addressed the issue of whether the Ministry had made reasonable efforts to identify and locate the personal information requested by the appellant and determined that they had.

In its representations, the Ministry outlined the steps taken to identify and locate the personal information requested. After an initial search, certain documentation was released to the appellant. The Ministry conducted a further search and ultimately located additional interview notes which were subsequently provided to the appellant.

The Ministry explained why the test score which the appellant believed was being withheld did not exist. The Commissioner noted the appellant's satisfaction with the explanation and stated that he was satisfied that the test score did not exist.

With respect to the list of persons contacted for references, the Ministry submitted that it is their policy to contact references near the end of the job competition. As the appellant was not successful in proceeding to that stage, none of her references were contacted. The Commissioner noted the appellant's satisfaction with this explanation and stated that he was satisfied that no references were contacted.

The Commissioner also indicated his satisfaction that no records existed with

respect to comments or recommendations regarding the job competition and the termination of the appellant's employment contract. By way of summary, the Commissioner stated that he was satisfied that the Ministry had made reasonable efforts to identify and locate the personal information requested by the appellant and that it had provided to her all existing recorded information relating to her access request.

The second issue addressed by the Commissioner was whether the oral comments or recommendations of the appellant's superiors regarding the job competition and the termination of the appellant's employment contract were "personal information" which gave rise to a right of access.

The Commissioner noted that section 47 of the *Act* provides the appellant with a right of access to personal information. Subsection 47(a) states that the personal information must be "contained in a personal information bank in the custody or under the control of an institution".

Order No. 18
Appeal No. 880086
(October 6, 1988)

The appellant applied to the Ministry of Health requesting information on the particulars of the operations of Bill 94 (*Health Care Accessibility Act*). In particular, the appellant requested the periodic reports that show the number of declarations seeking reimbursement for additional charges by physicians, and those approved by the Ministry.

The Ministry granted disclosure of the requested records. However, the physicians' names, OHIP registration numbers and the dates on which they opted in or out of OHIP were severed from the records pursuant to section 67 of the *Freedom of Information and Protection of Privacy Act, 1987.*

The Commissioner noted that the issues arising in this appeal were identical to those considered previously in the Order issued in Appeal No. 880016 released July 28, 1988.

As in that appeal, the Commissioner found here that section 44 of the *Health Insurance Act* and section 7 of the *Health Care Accessibility Act* operated to bar the application of the *Freedom of Information and Protection of Privacy Act, 1987* in respect to the information requested by the appellant. Accordingly, the Commissioner could not interfere with the decision of the head.

In making this determination, the Commissioner addressed the issue of whether the legislative provisions relied on by the institution were "confidentiality provisions" barring the application of the *Freedom of Information and Protection of Privacy Act, 1987.* The Commissioner stated that section 67 did not contain an exemption to the *Act*'s disclosure obligations. Rather, subsection 67(2) provided that the *Act* overrides "confidentiality provisions" in other legislation, unless the other legislation specifically provides otherwise. However, because subsection 67(3) delays the application of subsection 67(2) until January 1, 1990, a head may be bound not to disclose information pursuant to a "confidentiality provision" contained in another piece of legislation until that date.

The Commissioner also stressed that he did not engage in a balancing of access and privacy interests in situations such as these where a Ministry relies upon a "confidentiality provision" so as to remove itself from the ambit of the *Act*. The Commissioner stated that he will continue to subject each "confidentiality provision" to his independent analysis and scrutiny.

Order No. 19
Appeal No. 880055
(October 7, 1988)

The appellant applied to the Ministry of Correctional Services requesting access to a copy of her probation case file covering the period from January 1987 to January 7, 1988. The Ministry forwarded a number of photocopies of documents but withheld the following:

1) a psychological report prepared by the Regional Psychologist,

2) the casenotes of the Probation and Parole Officer, and

3) the Level of Supervision Inventory Form.

The Ministry advised the appellant that access to these records would be provided in the presence of the Regional Psychologist who would explain the records to the appellant. The Ministry relied on subsection 48(4) of the *Freedom of Information and Protection of Privacy Act, 1987* (the *Act*) which states that a head,

"...shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used."

The appellant refused this condition of access and appealed the decision maintaining that it effectively denied her access to the requested records.

In the course of the inquiry, the Ministry agreed to release the casenotes and the Level of Supervision Inventory Form without an explanation, although it invited the appellant to meet with the Probation Officer. The Commissioner, therefore, ordered that the Ministry release these records.

The Commissioner also ordered the release of the Regional Psychologist's report. The Commissioner agreed that subsection 48(4) of the *Act* does place a duty on the head to "ensure that the personal information is provided to the individual in a comprehensible form". However, the Commissioner found that subsection 48(4) does not create a further duty on the head to assess a specific requester's ability to comprehend a particular record.

The Commissioner went on to find that the appellant, in this case, would have no difficulty in understanding or comprehending the contents of the record in question. The Commissioner saw the primary concern of the Ministry as being the possibility that the appellant might "misinterpret" the significance or use of medical or psychiatric terms in the record.

The Commissioner found that the personal information in question in this appeal was "medical information" under subsection 49(d) of the *Act*. While subsection 49(d) gives the head the discretion to release medical information, the Commissioner indicated that the Ministry had not suggested that the head had or should have exercised his discretion under subsection 49(d) in favour of non-disclosure. In the absence of any reference to this subsection in the Ministry's representations, the Commissioner concluded that the head felt the factors required for the application of subsection 49(d) were not present. The Commissioner concluded that the head must exercise his or her judgment and make a decision as to whether or not the prejudice contemplated by subsection 49(d) can be reasonably expected to arise as a result of the disclosure.

The Commissioner also noted that "personal information" is defined in subsection 2(1) of the *Act* as "recorded information about an identifiable individual...". Also defined in subsection 2(1) is the term "personal information bank" which is "a collection of personal information that is organized and capable of being retrieved."

The Commissioner stated that these key definitions indicate the Legislature's intention that an individual's right of access under the *Act* be to information already recorded or retrievable in some physical form. The Commissioner stated that the oral comments or recommendations at issue in this case could not be so characterized.

The Commissioner acknowledged the appellant's argument that the purposes of the *Act* were broad enough to include a duty to create a record from a conversation. However, the wording of subsection 1(b) of the *Act* refers to "personal information" which is defined in the *Act* at subsection 2(1) as "recorded information...". The Commissioner stated that as he had already determined that the Ministry had provided the appellant with all existing recorded information relating to her request, the appellant had not been denied access to her personal information. The Commissioner reiterated that the legislative intent of the *Act* did not impose a specific duty on a Ministry to transcribe oral views, comments or discussions.

Order No. 20
Appeal No. 880075
(October 7, 1988)

The appellant applied to the Ministry of the Attorney General requesting access to rating information relating to herself and the successful candidate in a job competition. The Ministry granted access to a number of records relating to the evaluation of the appellant. Information concerning the successful candidate was withheld pursuant to subsection 21(3)(g) of the *Freedom of Information and Protection of Privacy Act, 1987.*

The Commissioner upheld the decision of the head to withhold information relating to the successful candidates and dismissed the appeal. In coming to this conclusion, the Commissioner first considered the issue of whether the ratings and test results were "personal information" as defined in subsection 2(1) of the *Act.*

The Commissioner determined that the ratings and test results fell within the definition of personal information.

The second issue addressed by the Commissioner was whether disclosure of the personal information (the ratings and test results of the successful candidate) would be an unjustified invasion of the personal privacy of that individual.

Subsection 21(3)(g) of the *Act* contains a presumption of an unjustified invasion of personal privacy for information which consists of personal recommendations or evaluations, character references or personnel evaluations. Having examined the contents of the records in question, the Commissioner concluded that both the ratings and test results consisted of "personal evaluations".

In reviewing the operation of subsection 21(3) of the *Act*, the Commissioner noted that subsection 21(4) rebuts the presumption set out in subsection 21(3) in certain circumstances. In addition, the application of section 23 of the *Act* (compelling public interest) to a subsection 21(3) presumption, may also result in disclosure.

The Commissioner also stated that a subsection 21(3) presumption may be rebutted when a type of information listed under subsection 21(3) also triggers section 11 of the *Act*, which obliges the head to disclose any record "if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public."

The Commissioner indicated that it was premature at this stage of the development of the *Act* to limit the means of rebutting the subsection 21(3) presumption to only those sections set out above. For example, a combination of the circumstances set out in subsection 21(2) of the *Act* might be so compelling as to outweigh a presumption under subsection 21(3). However, the Commissioner viewed such a case as being extremely unusual. In the present case, the Commissioner found that the presumption of an unjustified invasion of personal privacy had not been rebutted.

The final issue addressed by the Commissioner was whether the record could reasonably be severed under subsection 10(2) of the *Act* without disclosing information which falls under the exemption.

The Commissioner determined that although the Ministry was willing to provide access to total score results, this total score revealed the interviewer's subjective evaluations of the successful candidate's skills and abilities and therefore the information fell within the definition of personal information. As such, the mandatory provisions of section 21 applied. Accordingly, the Commissioner concluded that the information in question fell under one of the exemptions and could not be reasonably severed pursuant to subsection 10(2) of the *Act*.

Order No. 21
Appeal No. 880028
(October 13, 1988)

The appellant applied to the Ontario Labour Relations Board requesting access to documents contained in a particular file. The institution granted access to all documents in the file except a Labour Relations Officer's Report and a Report of Labour Relations Officer Investigation of Complaint. The Board claimed an exemption under subsection 111(6) of the *Labour Relations Act*, R.S.O. 1980, c.228.

The Commissioner upheld the decision of the Board to claim this exemption and dismissed the appeal.

In coming to this conclusion, the Commissioner addressed the issue of whether the legislative provision relied on by the Board was a "confidentiality provision" barring the application of the *Act*.

As the Commissioner stated in previous Orders (Appeal Nos. 880010, 880016 and 880086), section 67 of the *Freedom of Information and Protection of Privacy Act, 1987* does not contain an exemption to the *Act*'s disclosure obligations. The Commissioner stated that subsection 67(2) provides that the *Act* overrides "confidentiality provisions" in other legislation, unless the other legislation specifically provides otherwise. However, because subsection 67(3) of the *Act* delays the application of subsection 67(2) until January 1, 1990, a head may be bound not to disclose information pursuant to a "confidentiality provision" contained in another piece of legislation until that date.

After reviewing subsection 111(6) of the *Labour Relations Act*, the Commissioner found that it qualified as a "confidentiality provision" as the term is used in section 67 of the *Freedom of Information and Protection of Privacy Act, 1987*.

The Commissioner stated that although the subsection prohibits disclosure, it also contains a discretionary power which authorizes the Board to disclose information obtained by a Labour Relations Officer, as well as a report of a Labour Relations Officer. The result is that subsection 111(6) is not an absolute prohibition against disclosure of information. As this particular provision bars the application of the *Freedom of Information and Protection of Privacy Act, 1987* until January 1, 1990, the Commissioner encouraged the institution to suggest to Boards that they consider the release of information such as a Labour Relations Officer's report to those involved in a case.

The second issue addressed by the Commissioner was whether the records in question fell within the scope of the "confidentiality provision" relied on. The Commissioner found that the Labour Relations Officer's Report and the Report of the Labour Relations Officer Investigation of Complaint properly came within the definition of "information or material furnished to or received by a labour

relations officer" and a "report of a labour relations officer" contained in subsection 111(6) of the *Labour Relations Act.*

Order No. 22
Appeal No. 880008
(October 21, 1988)

The appellant applied to the Management Board of Cabinet requesting access to all records from June 1983 to June 1985 pertaining to the decision to extend government financing to separate schools, including reviews of the financial, political, educational or social impact, polls and correspondence with other ministries.

The Board advised the appellant that it did not have any reviews of the political, educational or social impact, or polls dealing with the extension of funding to separate schools in its custody. Accordingly, access was denied on the basis that the records did not exist.

The Board transferred the request for correspondence with other ministries to the Ministry of Education pursuant to section 25 of the *Freedom of Information and Protection of Privacy Act, 1987.* The portion of the request concerning financial impact was transferred in part to the Ministry of Treasury and Economics.

The Board denied access to a record concerning the financial impact of extension of government financing under subsection 12(1)(e) of the *Act.* The record in question was a document prepared to brief the Chairman of Management Board of Cabinet dated June 29, 1985. The Commissioner upheld the decision of the head not to disclose the record.

The Commissioner found that the record did not fall within the exemption provided by subsection 12(1)(e) of the *Act.* The Commissioner stated that the use of the present tense in the subsection precluded its application to a record which had already been presented to Executive Council or its committees. The Board acknowledged that this matter had been brought before it and that the record in question would not be used again.

In addition, the Commissioner considered the interpretation of the introductory wording of subsection 12(1). The Commissioner concluded that the use of the word "including" in subsection 12(1) of the *Act* should be interpreted as providing an expanded definition of the types of records which are deemed to qualify as subject to the Cabinet records exemption, regardless of whether they met the definition found in the introductory text of subsection 12(1). The Commissioner noted that the types of documents listed in subparagraphs (a) through (f) are not the only ones eligible for the exemption and that any record which would reveal the substance of deliberations of an Executive Council or its committees qualifies for exemption under subsection 12(1). The Commissioner determined that the record at issue in this appeal met the definition of an exempt Cabinet record.

The second issue addressed by the Commissioner was whether the head had a duty under subsection 12(2)(b) of the *Act* to seek the consent of the Executive Council before denying access to a record where an exemption was claimed under subsection 12(1).

The Commissioner considered this issue in his Order in Appeal No. 880006. In that Order, he determined that subsection 12(2)(b) did not impose an absolute requirement on the head to seek the consent of Cabinet in all cases where an exemption under subsection 12(1) is claimed by an institution.

The Commissioner reiterated his view that the discretion of the head to seek consent must be exercised irrespective of whether the requester has asked the head to do so as part of a request for subsection 12(1) records.

In the present case, the Commissioner stated that the head had considered whether Cabinet consent should be sought and exercised his discretion against doing so. The Commissioner found nothing improper or inappropriate with this exercise of discretion by the head.

The final issue addressed by the Commissioner was whether the severability requirements of subsection 10(2) applied to the record in question.

The Commissioner indicated that he addressed the broad issue of the application of severance to records in his Order in Appeal No. 880006. In that Order, he stated that the key question raised by subsection 10(2) was one of reasonableness. After having reviewed the record at issue in this appeal, the Commissioner concluded that no information that was in any way responsive to the request could be severed from the document without disclosing information that legitimately fell within the exemption.

In conclusion, the Commissioner stated that in enacting the *Act*, the Legislature acknowledged the need for all government records to fall within the purview of the *Act*. The Commissioner noted that this was not the case

in many jurisdictions, including our own Canadian federal system, where Cabinet records are explicitly excluded from coverage and are not reviewable by the federal Information Commissioner.

The Commissioner stated that as an independent officer of the Legislature, he is not bound to accept an institution's decision that a record qualifies for an exemption. He stated that, unlike other jurisdictions, the *Act* gives him the mandate to obtain and review the records, as well as the responsibility, to exercise his judgment in each appeal.

Order No. 23
Appeal Nos. 880020, 880035, 880066 and 880242

(October 21, 1988)

The appellants applied to the Ministry of Revenue requesting access to the estimated 1984 market values of all properties in Metropolitan Toronto on a property-by-property basis, including the municipal address of each property. The Ministry denied access to the record pursuant to subsection 21(1) of the *Freedom of Information and Protection of Privacy Act, 1987*. In addition, the Ministry asserted that subsection 57(1) of the *Assessment Act* contained a "confidentiality provision" which precluded the release of the requested information.

The Commissioner ordered that the Ministry disclose the requested information to the appellants.

In making this determination, the Commissioner first addressed whether subsection 57(1) of the *Assessment Act* was a "confidentiality provision" as contemplated by section 67 of the *Freedom of Information and Protection of Privacy Act, 1987*. The Commissioner stated that the language of subsection 57(1) of the *Assessment Act* clearly stipulated that certain types of information were to be protected from disclosure and as such, found that in the circumstances of this appeal, subsection 57(1) of the *Assessment Act* was a "confidentiality provision".

The second issue addressed by the Commissioner was whether the information requested by the appellants fell within the scope of the "confidentiality provision".

The Commissioner determined that subsection 57(1) did not make all information collected in relation to assessment confidential in all circumstances. The Commissioner stated that subsection 57(1) did not prohibit the release of information otherwise made available to the public under *the Assessment Act*. The Commissioner referred specifically to the municipal address of a property and its market value, which is presently publicly accessible information and is required to be entered on the assessment roll in accordance with subsection 13(1) of the *Assessment Act*. The assessment roll is accessible by the public at the office of the clerk of the municipality.

The Commissioner concluded that the subsection 57(1) "confidentiality provision was <u>not</u> intended to extend to the <u>types</u> of information that are required to appear on an assessment roll. As such, the Commissioner found that neither the municipal addresses nor the estimated 1984 market values fell within the scope of the "confidentiality provision" contained in subsection 57(1).

The third issue addressed by the Commissioner was whether the information contained in the record was personal information as defined in subsection 2(1) of *the Freedom of Information and Protection of Privacy Act, 1987*.

The Commissioner stated that the municipal address of a property is a description identifying the location of the property in a municipality. In most cases, the name of the street and the number of the property are affixed at locations on the street, and the property is clearly visible to the public.

The Commissioner found that the municipal location of a property could not automatically be equated with the address of its owner, notwithstanding the fact that many individuals do reside in the properties they own. The Commissioner concluded that the municipal addresses requested by the appellants did not qualify as "personal information" under subsection 2(1)(d) of the *Act*.

The Commissioner acknowledged that in considering whether or not the municipal addresses and the estimated 1984 market values qualified as "personal information", he must also consider the introductory wording of subsection 2(1) of the *Act* which defines "personal information" as "... any recorded information about an identifiable individual ...". The Commissioner stated that the operative word in this definition is "about". The Commissioner determined that the municipal location of a property and its estimated market value was not information <u>about</u> an identifiable individual.

The Commissioner's finding that the information contained in the record was not "personal information" as defined in subsection 2(1) of the *Act* disposed of the appeals.

Order No. 24
Appeal No. 880006
(October 21, 1988)

The appellant applied to the Ministry of the Attorney General requesting access to files on policies, practices, proposals and reports on "whistleblowers". The appellant requested that the Ministry provide these records for viewing in Ottawa as they became available.

Working documents for a policy submission to Cabinet on "whistleblowers" in the public sector were denied under subsection 12(1)(b) of the *Act*. A briefing note to the Attorney General on the status of policy development on the subject was denied under subsection 12(1)(e) of the *Act*. Notes and interoffice memoranda used in preparing the working documents and briefing note were denied under subsection 13(1) of the *Act*.

The first issue addressed by the Commissioner was whether certain of the records in question fell within the subsection 13(1) exemption. After reviewing the records, the Commissioner found that the records fell within the scope of the subsection 13(1) exemption.

It could be argued that the wording of subsection 13(2) might be read as requiring the disclosure of a record in its entirety if a determination was made that it contained any of the categories of information identified under the subsection, notwithstanding that the record also contained advice and recommendations as defined under subsection 13(1). The Commissioner did not accept this interpretation and stated that in such situations, the head should consider whether or not the record could reasonably be severed under subsection 10(2) and the subsection 13(2) information disclosed.

The Commissioner found that the factual information in the records in this appeal was interwoven with advice and recommendations and could not reasonably be considered a separate and distinct body of fact. As such, it did not meet the criteria of "factual material" under subsection 13(2)(a), and the mandatory exception provided by that subsection did not apply.

The next issue addressed by the Commissioner was whether certain of the records in question fell within subsections 12(1)(b) and 12(1)(e) of the *Act*. After reviewing the contents of the records in question, the Commissioner was satisfied that they came within the mandatory exemptions provided by subsections 12(1)(b) and (12)(1)(e).

The next issue addressed by the Commissioner was whether the head had a duty under subsection 12(2)(b) of the Act to seek the consent of the Executive Council before denying access to a record when an exemption was claimed under subsection 12(1).

The Commissioner concluded that the *Act* did not impose an absolute requirement on the head to seek the consent of the Cabinet in all cases where an exemption under subsection 12(1) was claimed by an institution. However, in all cases, it is incumbent on the head to be mindful of the option available under subsection 12(2)(b) and to direct his or her mind to whether or not consent of the Cabinet should be sought. The Commissioner indicated that he was also of the view that the discretion of the head to seek consent must be exercised irrespective of whether the requester has asked the head to do so as part of the request for subsection 12(1) records.

In the present case, the Commissioner indicated that the head had considered whether Cabinet consent should be sought and exercised his discretion against doing so. The Commissioner found nothing improper or inappropriate with the exercise of this discretion by the head.

The next issue addressed by the Commissioner was whether the severability requirements of subsection 10(2) applied to the records in question.

The Commissioner stated that the key question raised by subsection 10(2) was one of reasonableness. The Commissioner stated that a valid subsection 10(2) severance must provide the requester with information that is in any way responsive to the request, while at the same time protecting the confidentiality of the portions of the record covered by the exemption.

After reviewing the records at issue in this appeal, the Commissioner concluded that no information that was in any way responsive to the request could be severed from the documents and provided to the requester without disclosing information that fell within the subsections 12(1)(b), 12(1)(e) and 13(1) exemptions.

The final issue addressed by the Commissioner was whether there was a compelling public interest in disclosure of the records exempted under subsection 13(1) that clearly outweighed the purpose of the exemption, as provided by section 23 of the *Act*. Section 12 is not included in the list of sections to which section 23 applies.

The Commissioner stated that two requirements must be satisfied in order to invoke the application of the so-called "public interest override"; there must be a compelling public interest in disclosure; and this compelling public

interest must clearly outweigh the purpose of the exemption, as distinct from the value of disclosure of the particular record in question.

Although the Commissioner acknowledged that there could be a public interest in the issue of "whistleblowing", he was not convinced that this interest was "compelling", nor did he accept that the release of the records in question would or could clearly outweigh the purpose behind the section 13 exemption created by the *Act*.

In conclusion, the Commissioner stated that in enacting the *Act*, the Legislature acknowledged the need for all government records to fall within the purview of the *Act*. The Commissioner noted that this was not the case in many jurisdictions, including our own Canadian federal system, where Cabinet records are explicitly excluded from coverage and are not reviewable by the federal Information Commissioner.

The Commissioner stated that as an independent officer of the Legislature, he is not bound to accept an institution's decision that a record qualifies for an exemption. He stated that, unlike other jurisdictions, the *Act* gives him the mandate, as well as the responsibility, to exercise his judgment in each appeal.

Order No. 25
Appeal No. 880174
(October 24, 1988)

The appellant applied to the Ontario Labour Relations Board requesting access to the written reports of a conciliation officer for two meetings. The Board advised the requester that reports of labour relations officers were exempt from disclosure under subsection 111(6) of the *Labour Relations Act*. The Board further advised that since this "confidentiality provision" prevailed over the *Freedom of Information and Protection of Privacy Act, 1987*, the reports could not be released.

The Commissioner upheld the decision of the Board to deny access to the records in question.

The Commissioner noted that the issues raised by this appeal were identical to those raised by Appeal No. 880028. Given that the nature of the records requested, the Boards's decision and the written representations of the Board to the Commissioner in regard to this appeal were virtually identical to Appeal No. 880028, and that the representations of the appellant raised no issues or arguments that were not fully addressed in that previous appeal, the disposition of the issues raised by this appeal was the same as in Appeal No. 880028.

The Commissioner found that in the circumstances of this appeal, subsection 111(6) of the *Labour Relations Act* operated as a "confidentiality provision" barring the application of the *Freedom of Information and Protection of Privacy Act, 1987*, in respect of the information requested.

The Commissioner reiterated that subsection 111(6) of the *Labour Relations Act* contained a discretionary power that had been accorded to the Board to disclose information obtained by a labour relations officer, as well as the report of a labour relations officer. As this particular "confidentiality provision" barred the application of *the Freedom of Information and Protection of Privacy Act, 1987* until January 1, 1990, the Commissioner encouraged the institution to suggest to Boards to consider the release of information such as a report of a labour relations officer to those involved in the case.

Order No. 26
Appeal No. 880036
(November 2, 1988)

The appellant applied to the Ministry of Labour requesting access to all records filed by union trust funds with the Minister in 1986 and 1987 as required by subsection 86(2) of the Ontario *Labour Relations Act*. He also requested that his request be treated as a continuing request for a period of 2 years pursuant to subsection 24(3) of the *Freedom of Information and Protection of Privacy Act, 1987*.

The ministry advised the trust funds which had filed the requested information that a request for the information had been received. The trust funds were invited to provide submissions to the ministry with respect to the issue of disclosure of the requested information.

The ministry advised the appellant that access to the requested records was denied because section 86 of the *Labour Relations Act* operated as an implied "confidentiality provision" barring the application of the *Freedom of Information and Protection of Privacy Act, 1987*.

The issue addressed by the Commissioner was whether section 86 of the *Labour Relations Act* was a "confidentiality provision" for the purposes of section 67 of the *Freedom of Information and Protection of Privacy Act, 1987.*

The Commissioner noted that the term "confidentiality provision" was not defined in the *Act*. He stated that he had been given the opportunity to formulate a definition which would promote the policies promulgated in the *Act*. The Commissioner indicated that it would be contrary to the general intent of the legislation to narrow unnecessarily the circumstances in which the *Act* applied.

The Commissioner stated that the use of the term "confidentiality provision" in section 67 of the *Act* contemplated language specifically providing for confidentiality and non-disclosure of information. The Commissioner was of the opinion that such a confidentiality provision must include express language by which the disclosure of certain information was clearly prohibited.

The Commissioner stated that section 86 of the *Labour Relations Act* created a repository within the ministry respecting certain audited financial statements. Nowhere in the section was the Minister directed to or precluded from taking any particular action with respect to the financial statements once they were filed. In addition, the Commissioner stated that the provision in question was completely silent with respect to confidentiality. The Commissioner also noted that the section specifically provided for a right of access to certain individuals who were free to disseminate the records in question to whomever they chose. The Commissioner found that section 86 of the *Labour Relations Act* was not a "confidentiality provision" for the purposes of section 67 of the *Freedom of Information and Protection of Privacy Act, 1987.*

Since the Commissioner concluded that section 86 did not qualify as a "confidentiality provision", he remitted the matter to the head so that the head could consider the appellant's access request within the framework of the *Freedom of Information and Protection of Privacy Act, 1987.*

Order No. 27
Appeal No. 880059
(November 2, 1988)

This appeal arose as a result of a request made to the Ministry of Labour for access to all records filed by union trust funds with the Minister in 1986 and 1987 as required by subsection 86(2) of the Ontario *Labour Relations Act.* The trust funds were invited by the ministry to provide submissions with respect to the issue of disclosure.

Many of the trust funds retained the appellant, who is a lawyer, to represent them. In order to make submissions on behalf of his clients, the appellant sought to determine the identity of the person(s) requesting access to the records filed by the union trust-funds. The Ministry denied access to the name of the requester claiming that it was personal information pursuant to subsection 21(1) of the *Freedom of Information and Protection of Privacy Act, 1987.*

The Commissioner ordered that the Ministry disclose the name of the requester to the appellant.

As a preliminary matter, the Ministry argued that the *Act* provided a complete code of procedure and, because there was no stated obligation on the Ministry to disclose the name of a requester, the principles of natural justice were not breached by the failure to do so.

The Commissioner did not accept this argument. He stated that while it was true that various provisions of the *Act* set out procedures to be followed by ministries in dealing with requests for information, the *Act* did not address every aspect of procedure. The Commissioner concluded that this silence should not be interpreted as creating a prohibition.

The Commissioner stated the decision as to whether the name of a requester will be disclosed should be governed by the substantive provisions of the *Act* relating to the disclosure of information. The Commissioner stressed that each case must be considered on its facts, and that the decision whether or not to release a requester's name would vary from case to case depending on the circumstances of each appeal.

The next issue addressed by the Commissioner was whether the name of the original requester was "personal information" as defined in subsection 2(1) of the *Act*. The Commissioner stated that if the record at issue contained only the name of an individual, it could not be considered "personal information" as a name alone could not be considered "recorded information <u>about</u> an identifiable individual".

The Commissioner stated that, in this case, the name did not appear alone, but in the context of a request for information. The Commissioner concluded that this rendered the name of

the requester "personal information" as defined by the *Act*.

The final issue addressed by the Commissioner was whether disclosure of the name of the original requester would constitute an unjustified invasion of personal privacy under section 21 of the *Act*.

In referring to subsection 21(2)(a), the ministry submitted that disclosure of a requester's name would discourage people from requesting records under the *Act*. The Commissioner stated that in the absence of some empirical evidence to support this view, he could not accept that the public would refrain from applying for information from the government simply because there was a possibility that their names would be disclosed to someone else who had an interest in or was affected by the request.

The appellant invoked the concepts of natural justice and procedural fairness in making an argument that knowledge of the requester's name was necessary and relevant to a fair determination of his client's rights pursuant to subsection 21(2)(d) of the *Act*. Related Appeal No. 880036 addresses the issue of disclosure of the records referred to in this appeal. The Commissioner noted that to date the ministry had not been required to respond to the request for information in that appeal and only a preliminary issue involving the application of a "confidentiality provision" was being considered.

The Ministry also raised the possible application of subsection 21(2)(e) on the basis that since the ministry holds information pertaining to employers and employees, it was concerned that employees seeking information may be vulnerable to sanction from employers.

The Commissioner accepted the Ministry's argument that the disclosure of the name of a requester might, in some instances, cause difficulty to the requester. However, he was unwilling to impose a blanket rule of non-disclosure based on that reason. The Commissioner was satisfied that subsections 21(2)(e), (f) and (i) adequately addressed this possibility, and permitted the refusal to disclose a requester's name in appropriate circumstances.

The Ministry raised an argument concerning any expectations of confidentiality on the part of the original requester. The Commissioner indicated that neither of the request for information forms (Forms 1 and 2, Ontario Regulation 532/87 as amended) contained any provision indicating that the name of the requester would be held in confidence. The Commissioner acknowledged that in this case the original requester made his request by letter so, presumably, did not see an official form. However, his letter did not request that the information therein be kept confidential.

The Ministry advised the Commissioner that the original requester, after filing his request, indicated that he did not wish his name to be divulged to the appellant but, when notified of this appeal and given an opportunity to provide written submissions, he declined to do so.

The Commissioner concluded that disclosure of the original requester's name, in the circumstances of this appeal, would not result in an unjustified invasion of the requester's privacy.

Order No. 28
Appeal No. 880317
(December 6, 1988)

The Ministry of Correctional Services received a letter from the appellant seeking access to 60 different records. The appellant asked that each request be considered separately and processed individually. Pursuant to section 27 of the *Freedom of Information and Protection of Privacy Act, 1987* the ministry extended the 30 day limit for responding to a request. The appellant appealed the Ministry's decision with respect to the time extension.

In reviewing the extension of the time limit under subsection 27(1) of the *Act*, the Commissioner confined his inquiry to establishing whether the extension was reasonable in the circumstances.

In this case, the Ministry indicated that it had responded to 47 of the 60 requests initiated by the appellant. The remaining 13 requests consisted of two requests for general records and 11 requests for the appellant's own personal information.

With respect to the two requests for general information, the Commissioner was satisfied, after reviewing the ministry's submissions, that consultations were necessary and that an extension of 30 days to permit consultations was reasonable in the circumstances.

With respect to the eleven personal information requests, the Ministry indicated that the reason for an extension was that, taken together, the request involved over 3500 pages of records.

The Commissioner stated that in invoking section 27 of the *Act*, a head must address him or herself to whether

any particular request involved a large number of records or required consultations that could not reasonably be completed within the 30 day time limit. The Commissioner stated that section 27 did not lend itself to the interpretation that it was properly triggered where the response was to a number of separate requests by the same individual, collectively, involving a large number of records or necessitating consultation.

The Commissioner concluded that the Ministry's approach was incorrect in that it did not consider each request separately and decide whether each individual request was for a sufficiently large number of records so as to justify a section 27 time extension. However, as the Commissioner was satisfied that the Freedom of Information Co-ordinator was acting in good faith, and since she had undertaken to supply the appellant with a response to his request by November 25, 1988, it was not necessary for the Commissioner to make an order in respect of this matter.

Order No. 29
Appeal No. 880079
(December 15, 1988)

The appellant requested copies of all information related to him contained in the Ministry of Health personal information banks. The appellant requested that this information be sent to him by mail. The Ministry notified the appellant that access to the requested records would be granted. The Ministry further advised that it was its practice to disclose personal information to the individual in person in order to protect the individual's privacy and maintain confidentiality. The Ministry requested that the appellant phone its offices to make arrangements for pick-up of his records from the Ministry offices or another government office near his home. The Ministry further required that the appellant provide photo identification and sign a release form.

The appellant objected to being asked to come to the Ministry's offices to pick up the requested records and appealed the decision that required him to travel to Oshawa in order to receive access to the requested records.

During the mediation stage of the appeal, arrangements were made by the Ministry for the records to be available for pick-up by the appellant at the Port Hope office of another ministry. The appellant still objected to having to show photo identification and indicated that he had no such identification.

The Ministry agreed not to insist on photo identification but still required the personal attendance of the appellant with some other form of identification. This arrangement was not acceptable to the appellant who insisted on receiving the records by mail.

The Commissioner ordered that the Ministry send the personal information requested to the appellant by ordinary mail.

The Commissioner examined whether personal attendance and verification of the identity of the requester, prior to the release of personal information, were reasonable requirements imposed by the Ministry.

The Commissioner acknowledged that in order to protect the privacy of the individual to whom the information related, the Ministry must take steps to ensure, as best as it reasonably can, that the requester is the person whom he or she purports to be. The Ministry must then provide access to the personal information in a manner which is not unnecessarily restrictive.

The Commissioner, in his general remarks, acknowledged that the responsibility for verifying the identity of the requester of personal information can be fulfilled using more than one technique. An institution is in the best position to determine, on a case-by-case basis, what it will take to satisfy itself as to the requester's identity.

The Commissioner suggested that an obvious preliminary step involved comparing identifying information on the request form itself with the information that is in the institution's possession. The Commissioner recommended that at least one additional step in verifying the identity of the requester was appropriate. The example the Commissioner put forward was questioning a requester on unique personal information contained in the record itself.

The Commissioner acknowledged that one of the most reliable ways to verify the identity of a requester was to require his or her personal attendance and the presentation of some document of identification. However, the Commissioner stated his concern that this method may be an overly restrictive requirement that would place barriers on an individual's right to access. As such, the Commissioner concluded that personal attendance should not be the standard form of verification used by an institution.

The Commissioner stated that once the institution had satisfactorily verified the identity of the requester, the manner by which the personal information was actually provided to the requester should be at the requester's option. The Commissioner recom-

mended that the request form itself be amended to provide options to a requester with respect to manner of delivery. These options range from ordinary mail, to personal attendance. The Commissioner stated that in all cases, the inconvenience to the requester imported a corresponding benefit in terms of the security of the information and the consequent protection of the requester's privacy.

In the circumstances of this appeal, the appellant refused to consider any method of delivery of his personal information other than by ordinary mail. As such, the Commissioner concluded that it would be appropriate for the Ministry to send the information to the appellant in the manner requested by him.

Order No. 30
Appeal No. 880072
(December 21, 1988)

The appellant applied to the Ministry of Financial Institutions for access to a copy of a statement filed with the Ontario Securities Commission by the Ontario District Council of the Investment Dealers Association of Canada. This statement was made as part of an investigation conducted by the Investment Dealers Association into a complaint by the appellant to the Ontario Securities Commission regarding the activities of an investment dealer.

The Ministry denied access to this statement claiming that the Investment Dealers Association qualified as an agency described in subsection 14 (2)(a) of the *Act* and that the statement fell within that exemption.

The Commissioner upheld the decision of the Ministry and dismissed the appeal. In coming to this conclusion, the Commissioner first addressed the issue of whether the Investment Dealers Association was an agency under subsection 14 (2)(a) of the *Act*.

After setting out the relationship between the Ontario Securities Commission and the Investment Dealers Association, the Commissioner concluded that the Investment Dealers Association was acting as an agent for the Ontario Securities Commission and as a result the statement in question fell squarely within the parameters of subsection 14 (2)(a) of the *Act*.

The second issue addressed by the Commissioner was whether the head properly exercised his discretion with respect to the release of the statement for which the exemption was claimed. The Commissioner acknowledged that section 14 of the *Act* gives the head the power to exercise his discretion to disclose a record and as the Commissioner found nothing improper or inappropriate with the exercise of this discretion, the Commissioner did not alter this decision on appeal.

The final issue addressed by the Commissioner was whether the severability requirements of subsection 10 (2) of the *Act* applied to the record in question. The Commissioner reiterated that the key question raised by this subsection was one of reasonableness. In this case the Commissioner's review of the record resulted in the conclusion that no information that was in any way responsive to the request could be severed from the report and provided to the requester without disclosing information that fell within the exemption contained in subsection 14 (2)(a) of the *Act*.

Order No. 31
Appeal No. 880015
(December 21, 1988)

The appellant applied to the Ministry of Financial Institutions for access, on a computer disc, to copies of two forms for pension plans registered in Ontario with over 100 members.

The Ministry provided the requester with a fee estimate of $21,000 for the requested records and an explanation that access could not be provided in the format requested as the Pension Commission of Ontario was currently replacing its computer system and it would likely be 18 months before it could produce an accurate computerized listing in answer to the request. However, the institution advised that the information could be provided manually and provided the appellant with a break-down of the estimated cost. The appellant appealed this fee estimate.

During the course of mediation the institution reduced its fee estimate to $18,400.

The Commissioner addressed the issue of whether the head exercised his discretion under subsection 57 (1) of the *Act* not to charge a fee as well as to charge a fee. On reviewing the institution's representations, the Commissioner concluded that the head had properly exercised his discretion under the subsection and his decision should not be disturbed on appeal.

The second issue addressed by the Commissioner was whether the head had a duty to consider the application of subsection 57 (3) of the *Act* without any of the specific considerations enumerated thereunder being raised by the appellant.

The Commissioner reiterated his statement first made in his Order in Appeal No. 880009 released July 18, 1988 that the *Act* does not require a request for fee waiver to be explicit or in writing. However, the Commissioner stated that subsection 57(3) did require the requester to provide adequate evidence to support a claim for a fee waiver. In this appeal, the absence of submissions from the appellant on this issue supported the Commissioner's determination that there was no basis to justify a fee waiver.

The next issue addressed by the Commissioner was whether the amount of the estimated fees were properly calculated. Upon reviewing the relevant factors, including the permissible fees to be charged by regulation, the Commissioner determined that the fee estimate had been properly calculated.

The final issue addressed by the Commissioner was whether the head's decision that access to the records could not be provided for 8-10 months was reasonable. While the Commissioner stated that it would have been preferable for the head to have specifically cited subsection 27 (1)(a) as the basis for his decision and that a specific time be determined, the Commissioner concluded that the plan of the institution and the estimated time period was reasonable. The Commissioner stated that although the response to the request would take 8-10 months to process manually, this factor, in and of itself, did not lead to the conclusion that the institution had acted unreasonably.

Accordingly, the Commissioner upheld the decision of the head and dismissed the appeal.

Order No. 32
Appeal 880112
(December 21, 1988)

The appellant applied to the Ministry of Labour for access to all reports and recommendations with respect to a collapsed dome belonging to Harvex Elevators in Oxford Township, Ontario. The Ministry denied access to the records stating that subsection 34 (1)(a) of the *Occupational Health and Safety Act* prohibited disclosure as it was a "confidentiality provision" for the purposes of section 67 of the *Freedom of Information and Protection of Privacy Act, 1987.*

The Commissioner first addressed the issue of whether subsection 34 (1)(a) of the *Occupational Health and Safety Act* was a "confidentiality provision" for the purposes of section 67 of the *Freedom of Information and Protection of Privacy Act, 1987.*

After reviewing previous orders and the statutory provision itself, the Commissioner found that the subsection was such a "confidentiality provision".

The second issue addressed by the Commissioner was whether the records in question fell within the scope of the "confidentiality provision" relied on. Upon reviewing the records in question, the Commissioner was satisfied that the records fell within the scope of the "confidentiality provision" relied on by the Ministry.

The Commissioner noted further that subsection 34 (3) of the *Occupational Health and Safety Act* granted a discretionary power to a Director, authorizing him or her to disclose "information, material, statements or the result of a test acquired, furnished, obtained, made or received under this Act or the regulations". The Commissioner stated that in the circumstances of this appeal, it was not clear whether a Director had in fact exercised the discretion provided under subsection 34 (3) of the *Occupational Health and Safety Act.* Accordingly, the Commissioner ordered that a Director reconsider the request of the appellant in the context of that subsection.

Order No. 33
Appeal No. 880053
(December 28, 1988)

The appellant applied to the Ministry of the Solicitor General for all records relating to exchanges concerning him made between the ministry (including the Ontario Provincial Police) and the Department of Social Services, Northumberland County. The ministry advised the appellant that it could not provide access to the requested records as the records did not exist.

The appellant reiterated his request providing further detail. The Ministry treated this as a new request because it provided more information and specifics. However, the Ministry again advised the appellant that records did not exist in response to his second request. The appellant appealed this decision.

The Commissioner dismissed the appeal. In doing so, the Commissioner determined that while the Ministry may not have completely fulfilled its responsibilities pursuant to subsection 48(2) of the *Act* in its first attempt to answer the request, it did discharge its responsibilities relating to the second request.

The Commissioner determined that the statutory provisions relating to a

request for personal information place the responsibility for ascertaining the nature or whereabouts of a record of personal information on both the requester and the ministry. While some obligation is placed on the requester to provide as much direction as possible, the Commissioner acknowledged that a requester's knowledge as to what records are in the custody or control of a ministry will vary.

The Commissioner also acknowledged the danger that, due to a lack of knowledge on the part of a requester, a record that would respond to his or her request may not be considered for release because it had not been identified by the requester with sufficient precision. The Commissioner stated that the situation which arose in this case, where the request was for "all" information relating to the appellant, was one example where there was the potential to frustrate the right of access provided for in the *Act* because a request for "all" information may not be sufficiently descriptive for the purposes of subsection 48(1).

In the circumstances of this appeal, the Commissioner found that while the appellant attempted to identify the location of the personal information at issue, the request did not contain sufficient identifying information. Rather than asking for more details as to the area of search, the Ministry unilaterally decided to limit its search. Based on this limited search, the appellant was advised that no records existed. However, the appellant was not advised as to the extent of the search conducted by the Ministry.

Since the appellant was not satisfied with the Ministry's response to his original request, he provided further unsolicited details to the institution that precipitated another, wider search by the Ministry.

After reviewing the Ministry's submissions with regard to the extent of the second search, the Commissioner was satisfied that the Ministry had taken reasonable steps to locate records responding to the appellant's request.

Order No. 34
Appeal No. 880067
(December 28, 1988)

The appellant applied to the Ministry of Community and Social Services for all records from every file containing information about himself which the ministry or any agency for which the ministry is responsible had in its possession. The appellant indicated his desire to receive these records by mail.

The Freedom of Information Co-ordinator for the ministry forwarded all records responding to the appellant's request to the appellant by courier. The Co-ordinator subsequently informed the appellant that the records which had been sent to the appellant had been returned to the Ministry because the courier service could not deliver to the address which had been given by the appellant. The Co-ordinator requested another address from the appellant so that delivery by courier could be effected. The appellant refused to give another address or to pick up the material at a government office near his home and reiterated his desire that the records be sent by mail. The Ministry complied with this request.

Subsequently, the Co-ordinator received a letter from the appellant which included several torn-up copies of documents in English which the ministry had sent to the appellant. In this letter, the appellant noted that the Ministry had failed to send him a number of documents and the appellant provided a partial list of documents, letters and files that he suggested were missing. In addition, the appellant requested copies of regulations concerning retention and destruction of records.

The appellant appealed the response of the Ministry, stating that the ministry had not sent all the information pertaining to him and had also deliberately delayed its partial reply to his request.

In dismissing the appeal, the Commissioner stated his satisfaction that the ministry had complied with the provisions of the *Act*. In coming to this conclusion, the Commissioner first addressed whether the Ministry had made reasonable efforts to identify and locate the personal information requested by the appellant.

The Commissioner stated that a ministry will, usually, be in a better position than a requester to know what records are within its custody or control. The Commissioner acknowledged, however, that a requester may well have some knowledge as to the whereabouts of a record of personal information that pertains to him or her. The Commissioner stated that sections 47 and 48 of the *Act* place the responsibility for ascertaining the nature or whereabouts of a record of personal information on both the requester and the ministry.

As noted above, the appellant claimed that many more letters and documents existed concerning him. He provided a list of such letters and stated that he had proof that they existed. However, although he was specifically asked by the Commissioner's office to provide such proof, he did not do so.

The Commissioner was satisfied with the steps taken by the Ministry to identify and locate the personal information and records requested by the appellant as outlined in its representations.

The second issue addressed by the Commissioner was whether the delay by the Ministry in responding to the request was reasonable in the circumstances.

The initial delay in sending the records to the appellant was due to the fact that delivery by courier could not be made to a post office box. The Commissioner found that this problem was quickly remedied and therefore no undue delay existed.

The Commissioner acknowledged that the second cause of delay with respect to the reiterated request arose from the fact that the Ministry had not consulted with the appellant for clarification or canvassed all of the decision-makers within the Ministry. The Commissioner found that this approach was unsatisfactory.

The Commissioner stated that the final cause of delay was the Ministry's uncertainty about whether the appellant's letter contained a new request or merely reiterated previous ones. The Commissioner noted that since translation was involved and the appellant's letters were of a lengthy nature, it was understandable that confusion arose as to whether the subsequent request constituted a new request for access. Accordingly, the Commissioner found that the delay incurred by the Ministry in responding to the request was not unreasonable.

Order No. 35
Appeal No. 880092
(December 28, 1988)

The appellant applied to the Ministry of the Solicitor General for copies of all data on file with the Minden Detachment of the Ontario Provincial Police dating back to 1984. By way of clarification, the appellant advised that he had reported numerous thefts, vandalism, trespass and unlawful hunting incidents to the Detachment over the years, none of which had been resolved.

The Ministry granted partial access to documents relating to the appellant's request. Certain personal information was severed from the records pursuant to section 21 of the *Act*. The appellant appealed the decision of the head, citing dissatisfaction with the severances, the content of the records, and the incompleteness of the records.

The Commissioner first addressed the issue of whether the Ministry had taken reasonable steps to locate the records. At the Commissioner's request, the Ministry outlined in affidavit form the steps taken by its officials to locate the records. The initial search produced a number of records which were forwarded to the appellant. In the later stages of the appeal, the Ministry located and released more records.

In his Orders No. 33 (Appeal No. 880053) and Order No. 34 (Appeal No. 880067), the Commissioner outlined his views on the responsibilities of both ministries and requesters when a request requires clarification. As he noted in those Orders, sections 47 and 48 of the *Act* place the responsibility for ascertaining the nature or whereabouts of a record of personal information on both the requester and the ministry.

In this case, the appellant was able to identify the records he requested with some precision so as to enable the ministry to search its files and, although the ministry could not locate all of the records in its custody or control at first instance, it did eventually locate further records when provided with more details. The Commissioner found that the search undertaken was reasonable under the *Act*.

The second issue addressed by the Commissioner was whether the Ministry's records retention procedures were in accordance with the *Act*. The Commissioner noted that the search undertaken by the Ministry produced certain records corresponding to some but not all of the appellant's "older" complaints that were still on file beyond the date when, according to the ministry's records retention schedule, they could or should have been destroyed. The appellant cited this inconsistency in records retention as his basis for believing that other records corresponding to his "older" complaints might still be in existence.

The Commissioner set out the Ministry's procedure with regard to location and retention of records. The Commissioner stated that while the system described was perhaps a cumbersome way of retrieving personal information, it was a reasonable response to the obligations imposed by the *Act*.

Discussions with the Ministry revealed that there were potential problems with the personal information banks maintained by the Ministry. To address his concerns with the Ministry's record-keeping, the Commissioner asked the Ministry to consult with his Director of Compliance in order to produce written guidelines for the maintenance of the Ministry's personal information banks and for the disposal of records according to both the Min-

istry's own retention schedules and the terms of the *Act*. The Commissioner requested that the Ministry produce such written guidelines and provide him with a copy as soon as they are produced.

NOTE: Ontario Regulation 15/89 sets out considerations with respect to disposal of personal information by institutions.

Order No. 36
Appeal No. 880030
(December 28, 1988)

The appellant applied to the Ministry of Industry, Trade and Technology requesting access "to a copy of the contract implementing Ontario's memorandum of understanding with General Motors and Suzuki for the establishment of an automotive assembly plant at Ingersoll, Ontario" (the record).

After receiving the appellant's request, the Ministry gave notice of the request to an affected person (third party), under section 28 of the *Freedom of Information and Protection of Privacy Act* (the *Act*) and received representations from the third party concerning disclosure.

The Ministry decided to disclose part of the record requested by the appellant and access to the balance of the record was denied under subsection 17(1) of the *Act*.

The appellant appealed the decision to deny access to part of the record.

During the mediation/investigation stage of the appeal the scope of the appeal was narrowed to the severed information contained in Schedule "G" of the record.

The Commissioner ordered disclosure of Schedule "G" of the record in its entirety. He found that the Ministry and the third party had failed to satisfy the three-part test which must be met in order for the information to fall within the exemption in subsection 17(1) of the *Act*.

Although the Commissioner found that the first two parts of the section 17 test were not satisfied, i.e., the information was not of a technical, commercial or financial nature and was not "supplied" to the institution by the third party within the meaning of subsection 17(1), his decision was primarily based on the application of the third part of the test.

The Commissioner stated that in order to satisfy the third part of the section 17 test, the Ministry and/or third party must present evidence that is detailed and convincing and must describe a set of facts and circumstances that would lead to a reasonable expectation that the harm described in subsections 17(1)(a) to (c) would occur if the information was disclosed.

In this case, the Commissioner found that the evidence presented by the Ministry and the third party was insufficient to establish a reasonable expectation of harm resulting from the release of the severed information. In particular, he found it significant that a great deal of the information at issue in the appeal was revealed by the Ministry, to the public, in its News Release of August 27, 1986, announcing the joint venture.

SELECTED SUMMARIES OF SETTLED CASES

The following is a selection of summaries of cases which were settled during the investigation and mediation stage, where no inquiry was conducted. These particular summaries have been chosen because we thought they would be of interest or value.

Appeal No. 880068

The appellant applied to the Ontario Human Rights Commission requesting all documents relating to his case with the Commission. Access to the entire file was denied under subsection 14(1)(f) of the *Act*, as the appellant's case was under reconsideration.

In the course of an investigation, the appeals officer met with a representative of the Commission to review the file. After issuing an Appeals Officer's Report which invited written representations respecting the issues identified therein, the appeals officer was advised that the Commission had reconsidered its position. The Commission offered to release its file subject to the non-disclosure of a legal memorandum and the names of certain persons which the Commission obtained in the course of an investigation. After the appeals officer reviewed the matter with the appellant, the appellant accepted the Commission's offer of settlement and the appeal was resolved.

Appeal No. 880165

The appellant applied to the Ministry of Municipal Affairs requesting "release of a report on industrial lead in Brantford commissioned by the municipality and conducted by the firm M.M. Dillon Ltd." The Ministry denied access to the report.

The appeal was settled when the City of Brantford publicly released the report.

Appeal No. 880111

The appellant applied to the Ministry of Correctional Services requesting "separation document #1, original copy missing from personnel files:...[and the appellant requested to be told]... where original #1 copy has been filed, or where mentioned copy is now." The Ministry informed the appellant that the original of document #1 was forwarded to the Ministry of Government Services for processing. The appellant was also told that "the original Separation Notice... requested was destroyed by the Ministry of Government Services after three months, ...[therefore] no correction could be made to the record." As such, the request was denied.

The appeals officer contacted the Ministry of Government Services. The Supervisor, Support Services confirmed that the original document is kept three months, and then is microfilmed before the original is destroyed. The appeals officer informed the appellant that the original document had been microfilmed and that a copy would be made available to her on request. As a result, the appellant received a copy of her original document and the appeal was resolved.

Appeal No. 880045

The appellant had applied to the Office of the Chief Election Officer for a copy of the voter's list for his polling division. The appellant was refused a copy of this list as the *Act* does not apply to the Office of the Chief Election Officer and release of the information in the list would violate privacy rights in any event.

The office of the Commissioner forwarded a letter to the appellant confirming that the *Act* did not apply to the Office of the Chief Election Officer and advising that his request had been transferred to the Archives of Ontario which now had custody of the voter's list. The office of the Commissioner also informed the appellant that the names and addresses he sought from the record were likely available at any branch of the Metropolitan Toronto Public Library through a privately compiled directory service.

After investigating, the Commissioner sent a letter to the appellant advising that his office did not have jurisdiction to make an order in this matter. The Commissioner informed the appellant that, pursuant to subsection 65(1) of the *Act*, records placed in the Archives of Ontario by or on behalf of any organization other than an "institution" are not subject to the *Act* and the Office of the Chief Election Officer is not an institution subject to the *Act*.

Appeal No. 880057

The appellant applied to the Ministry of the Attorney General, requesting a letter purportedly sent to the Official Guardian from the appellant's lawyer. The Ministry advised the appellant that access to the record could not provided because the record did not exist.

The appeals officer reviewed the file, the entire contents of which had been disclosed to the appellant, and confirmed that the file did not contain the letter in question. The appeals officer enquired into the procedure for opening files and a file index card was produced. This card indicated that both the file opening date and the date of the first letter on file was subsequent to the date of the letter requested by the appellant. Permission was granted to release a copy of the file index card to the appellant. As a result of this investigation, the appellant indicated that he was satisfied that no record existed. The appellant had previously reviewed the lawyer's file and no letter was located.

Appeal No. 880077

The appellant applied to Ontario Hydro requesting a complete copy of his medical file. The institution granted access to all medical records except a memorandum to file drafted by a doctor which was withheld pursuant to subsection 49(d) of the *Freedom of Information and Protection of Privacy Act, 1987.*

After extensive discussions between the Appeals Officer and the institution, the doctor's memorandum to file was released to the appellant.

Appeal No. 880001

The appellant applied to the Ministry of the Environment requesting numerous reports, guidelines, polls, correspondence and minutes of meetings. The Ministry released a number of these records, some containing severances pursuant to sections 12, 13, 15, 17 and 21 of the *Act*. The appellant appealed with respect to the severances made to the Minutes of the Pesticides Advisory Committee.

The appeals officer attended meetings with officials of the Ministry of the Environment in which it was recommended that the Ministry review its response. The Ministry sent the appellant a revised copy of the minutes with significantly fewer severances. The appellant confirmed that the appeal was resolved.

Appeal No. 880155

The appellant applied to the Ministry of Correctional Services requesting access to a report of the Operational Review Team at the Elgin-Middlesex Detention Centre. The head advised that the Operational Review Team had completed its field work at the Elgin-Middlesex Detention Centre in January 1988; the report, however, was not finalized. The head suggested that the appellant re-submit the request after the report was completed.

The institution agreed to treat the appellant's outstanding request as a "continuing" request within the meaning of subsection 24(3) of the *Freedom of Information and Protection of Privacy Act, 1987* and agreed to advise the appellant of the anticipated time frame for producing the final report and responding to the request.

Appeal No. 880073

The appellant applied to the Ministry of Transportation requesting records containing personal information. The Ministry gave access to the records requested with the exception of 4 pages which were withheld pursuant to section 177 of the *Highway Traffic Act*. The records not sent to the appellant consisted of his driving record, a memorandum of the medical review section, the case study of the medical advisory committee, and a photocopy of a decision on an application for a Class D Drivers License.

The appeals officer obtained the part of the records not sent to the Appellant and, after discussion with the F.O.I. Co-ordinator, the Ministry reassessed its position with respect to the release of all the records and decided to release all of the records to the appellant.

Appeal No. 880098

The appellant applied to the Ministry of Transportation requesting "copies of all notes, reports, documents, memos, correspondence, records, letters and communications of any kind relating to Lonely Bay Estates..." The Ministry permitted access to the entire file except for 26 pages which were exempted under sections 13, 17 and 21 of the *Freedom of Information and Protection of Privacy Act, 1987.*

The appeals officer reviewed the severances with the Freedom of Information Co-ordinator and the head subsequently decided to release all remaining documents.

Appeal No. 880094

The appellant applied to the Ministry of Industry, Trade and Technology requesting "a copy of the IDEA Corp. portfolio review prepared by Mr. Jack Bidell". The Ministry denied access to this report under subsection 13(1) of the *Act* stating that "disclosure would reveal advice or recommendations of a consultant retained by an institution". As well, the Ministry cited subsections 14(1)(a), (b), (f) and 18(1)(c) of the *Act* on the basis of an ongoing police investigation and because disclosure "could reasonably be expected to prejudice the economic interest of an institution".

Following an investigation and upon issuing an Appeals Officer's Report which invited written representations respecting the issues identified therein, the Commissioner was advised by the Ministry that it had reconsidered its position and decided to "release to the requester a copy of the record requested in its entirety".

Appeal No. 880087

The appellant applied to the Ontario Human Rights Commission requesting copies of witness statements contained in her complaint file. The institution denied access claiming that subsection 14(1)(f) of *the Freedom of Information and Protection of Privacy Act, 1987* applied as the appellant's case was under reconsideration pursuant to section 36 of the *Human Rights Code, 1981.*

The Appeals Officer reviewed the applicability of section 14(1)(f) with the Freedom of Information Co-ordinator. The parties settled the appeal on the basis that the witness statements would be disclosed with the names of witnesses severed.

Appeal No. 880090

The appellant applied to the Ministry of Health requesting access to a statement as to precisely what services her medical doctor had submitted charges for. The Ministry disclosed this information apparently with severances. A letter from the Ministry indicated that the information was subject to severance in accordance with section 44 of the *Health Insurance Act* which does not allow for the provision of either diagnosis or nature of treatment.

An issue also arose in this appeal with respect to the procedures of the Ministry with respect to pick-up of the records. Initially, the appellant herself was required to attend at the Ministry's office with photo ID before the Ministry would release the records. Finally, after the appellant wrote to the Ministry protesting what she felt to be unreasonable requirements, the Ministry advised that her husband could pick up the record if he produced her signed consent to do so.

The appellant appealed both the procedures to pick up the record and the severances the Ministry planned to make. In an attempt to effect settlement, the appeals officer clarified to the appellant that the severances indicated in the covering letter had, in fact, not been made. In addition, a problem with the quality of the record copy was explained to the Appellant.

The appellant suspects that one of the records she feels is missing from the file might be found in her OHIP records. The appeals officer requested the Ministry conduct a search in this area and provide the appellant with a response in writing as to the results of this search. The appeals officer has not been notified as to the result of the search.

Appeal No. 880040

The appellant applied to the Ministry of Education requesting access to a report received by the Ministry in late 1985 or early 1986 concerning a complaint by the appellant to the Ministry about the Sault Ste. Marie Board of Education. The Ministry files were reviewed but the report requested was not located. The appellant was advised that she could not be given access "because the record does not exist".

At the suggestion of the appeals officer, the Ministry agreed to give the appellant access to the documents obtained in the search of Ministry files. The appellant has examined the documents and has received copies of several contained in the file. The appellant has indicated that there is nothing more that the Office of the Commissioner can do for her and that her appeal has been resolved.

Appeal No. 880182

The appellant applied to the Ministry of Agriculture and Food requesting a list of dairy processing companies identified by inspectors as having problems which persisted from one inspection to the next. The request included names, locations, nature of problems and the period over which they existed. The Ministry informed the appellant that a list of this information did not exist.

After extensive discussions between the Appeals Officer, the appellant and the Ministry, the Ministry agreed to provide the appellant with notice of each hearing conducted to consider the license status of a dairy processing plant. The appellant was satisfied and confirmed that the appeal was resolved.

Appeal No. 880004

The Appellant applied to the Ministry of Industry, Trade and Technology requesting copies of reports, evaluations, studies and correspondence involving an investment by the IDEA Innovation Fund Inc. The Ministry responded indicating that the request affected the interests of third parties. These third parties were given an opportunity to make representations concerning the disclosure of the records. The Appellant was notified that a decision would be made with regard to disclosure in accordance with subsection 28(4) of the *Act*.

The Appellant appealed the decision of the Ministry to delay release of the records requested. The Appellant contended that subsection 28(4) of the *Act* did not apply because one of the third parties, a company, no longer existed as it had declared bankruptcy and its assets had been dispersed by the receiver. The Appellant further contended that with the dispersal of the company assets, the interests of the second third party, the receiver, would not be affected.

After discussing the matter with the FOI Co-ordinator, the Appeals Officer informed the Appellant first, that the company had not been dissolved, and secondly that the Ministry had sent notices to, among others, corporations which had purchased assets of the corporation that had gone into receivership. The Appellant indicated that he was satisfied with this reason for delay and the appeal was resolved.

Appeal Nos. 880018 & 880019

The Appellant applied to the Ministry of Community and Social Services and to the Ministry of Consumer and Commercial Relations requesting "any and all information" on file pertaining to his birth and adoption. The Ministry of Community and Social Services informed the Appellant that the *Freedom of Information and Protection of Privacy Act, 1987* did not apply to information relating to adoptions.

The request to the Ministry of Consumer and Commercial Relations was sent to the office of the Registrar General. This office did not process it as a freedom of information request due to their understanding that the *Act* did not apply to a request for adoption information. The office of the Registrar General forwarded the request to the Adoption Disclosure Registry, Ministry of Community and Social Services. The Appellant received a second response from that Ministry stating that the *Act* did not apply to adoption information. A booklet was forwarded to the Appellant regarding the Adoption Disclosure Service which explained what type of information was available and how the Appellant could go about obtaining it.

The Commissioner informed the Appellant that he was unable to pursue the matter any further due to the fact that subsection 158a(5) of the *Child and Family Services Act, 1984* states that the *Freedom of Information and Protection of Privacy Act, 1987* does not apply to information relating to adoption. This subsection came into force on January 1, 1988.

Appeal No. 880088

The appellant applied to the Ministry of Health requesting the minutes of meetings of the Healing Arts Radiation Protection Commission from 1986 until February 1988 in addition to any studies or reports that the Commission had undertaken. The Ministry disclosed the records with more than 20 severances under sections 18(g), 17, 13, 21, 19 and 12(f) of the *Freedom of Information and Protection of Privacy Act, 1987.*

The Appeals Officer requested that the Ministry reconsider its position with respect to the severances. The Freedom of Information Co-ordinator reduced the number of severances to four. One of the remaining severances was under section 21 and the other three were under section 19 of the *Act*. The appellant accepted this and confirmed that the appeal was resolved.

Appeal No. 880205

The appellant applied to the Ministry of Health requesting statements made by staff and any other information relating to a specific incident. The Ministry refused access claiming that the records requested might interfere with a law enforcement matter or investigation pursuant to subsections 14(1)(a) and (b) of the *Freedom of Information and Protection of Privacy Act, 1987.*

The Ministry did not wish to disclose the witness statements until a pre-disciplinary hearing had taken place. A pre-disciplinary hearing was held and it was decided that no charges would be brought against the appellant. The Ministry released all records after the hearing. The appellant confirmed that the appeal was resolved.

Appeal No. 880258

The appellant, an employee of the Ministry, applied to the Ministry of Community and Social Services requesting access to his Human Resources records. The Ministry granted access to the records in full. However, the Ministry limited the amount of paid time in which the appellant was allowed to review his records. If further time was required by the appellant, he was asked to conduct the review on his own time.

In his letter of appeal, the appellant indicated that he was denied full and proper access to his files held by the Ministry. He also requested that all supervisory notes held by the Ministry be removed.

The appellant was advised by the Appeals Officer that the issue of whether the appellant should be allowed to conduct his review on Ministry or personal time was not an issue falling within the Commissioner's jurisdiction.

With respect to the removal of supervisory notes, the Appeals Officer advised the appellant to direct his request to the Ministry. Until such time as a decision was rendered by the Ministry, the Commissioner had no jurisdiction to entertain the appellant's appeal.

Appeal No. 880228

The appellant applied to the Ministry of the Environment requesting information regarding a "control order" issued by the Ministry to a corporation. Among other records, the appellant specifically requested the reports as required in section 13 of the "control order" which outlined the progress made by the corporation towards complying with the order. The Ministry originally denied access under subsection 22(b) of the *Freedom of Information and Protection of Privacy Act, 1987* on the basis that the information requested would soon be published. Subsequently, subsections 17(1)(a) and 18(2) of the *Act* were relied upon.

As a result of the involvement of an Appeals Officer, the Ministry reviewed its earlier decision. The Ministry advised the corporation involved of its intention to release the requested records unless the corporation appealed this decision to release within 30 days. The corporation advised the Ministry that it did not intend to appeal the decision to release the records in question and the records were released.

Appeal No. 880027

The Appellant applied to the Ministry of Labour requesting the Industrial Health and Safety Branch file relating to his former employer for the period of May 8, 1982 to January 1983. The Ministry forwarded a copy of the file with severances on one document pursuant to subsection 21(1) of the *Act*. The words severed identified an occupation which was mentioned three times. The Freedom of Information Co-ordinator explained that she severed this word because she thought that disclosure might enable someone to identify this person.

The Appeals Officer reviewed the document which contained the severances. Several attempts were made through letters and with the assistance of a translator to explain to the Appellant that the information he sought was not contained in the three words severed from the record. He eventually attended the Office of the Commissioner with a relative who assisted in translation. At that time, the appellant indicated that he understood the explanation given and that his appeal had been resolved.

Appeal No. 880184

The appellant, a retired employee of Ontario Hydro, applied to Ontario Hydro requesting his personnel file. The institution granted partial access severing certain portions of the records pursuant to subsection 49(1)(b) of the *Freedom of Information and Protection of Privacy Act, 1987* because there were references to retirement benefits of other retired workers.

In 1983, shortly after the appellant had retired, the file had been purged of all information other than that concerning ongoing pension benefits and insurance matters. The Appeals Officer explained to the appellant that there were no comments in his file about job performance or similar matters. The Appeals Officer described, in a general way, what had been severed and the appellant indicated that he was not concerned with these matters. The appellant confirmed that the appeal was resolved.

Appeal No. 880208

The appellant applied to the Ministry of Health requesting personal records indicating medication received, procedures performed, conclusions drawn and all findings from five hospitals dating from 1970 to the present. The Ministry informed the appellant that this information was not contained in OHIP files. The appellant was informed by the Ministry that OHIP did have a diagnostic code for billing purposes but disclosure of this information was denied pursuant to section 44 of the *Health Care Accessibility Act* claiming that this section was a "confidentiality provision" under section 67 of the *Freedom of Information and Protection of Privacy Act, 1987.*

The Appeals Officer clarified the type of information which the appellant was seeking. The Freedom of Information Co-ordinator advised the appellant that this information would be in the hospital records and/or treating physician's files. The appellant was advised to try to obtain this information from the hospitals or from his doctors. The Appeals Officer advised the appellant that neither of these entities fell within the Information and Privacy Commissioner's jurisdiction. The appellant was further advised that the Ministry could provide him with a list of dates he received service, the treating physician and the amount paid by OHIP. The appellant was content to receive whatever the Ministry could provide him. It was agreed that the Ministry would send the appellant a letter explaining the type of information they had and providing a personal information request form. The appellant confirmed that the appeal was resolved.